TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [illegible] 1924

No. [illegible]210

OHIO UTILITIES COMPANY, PLAINTIFF IN ERROR,

vs.

PUBLIC UTILITIES COMMISSION OF OHIO

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED SEPTEMBER 8, 1924.

(28,205)

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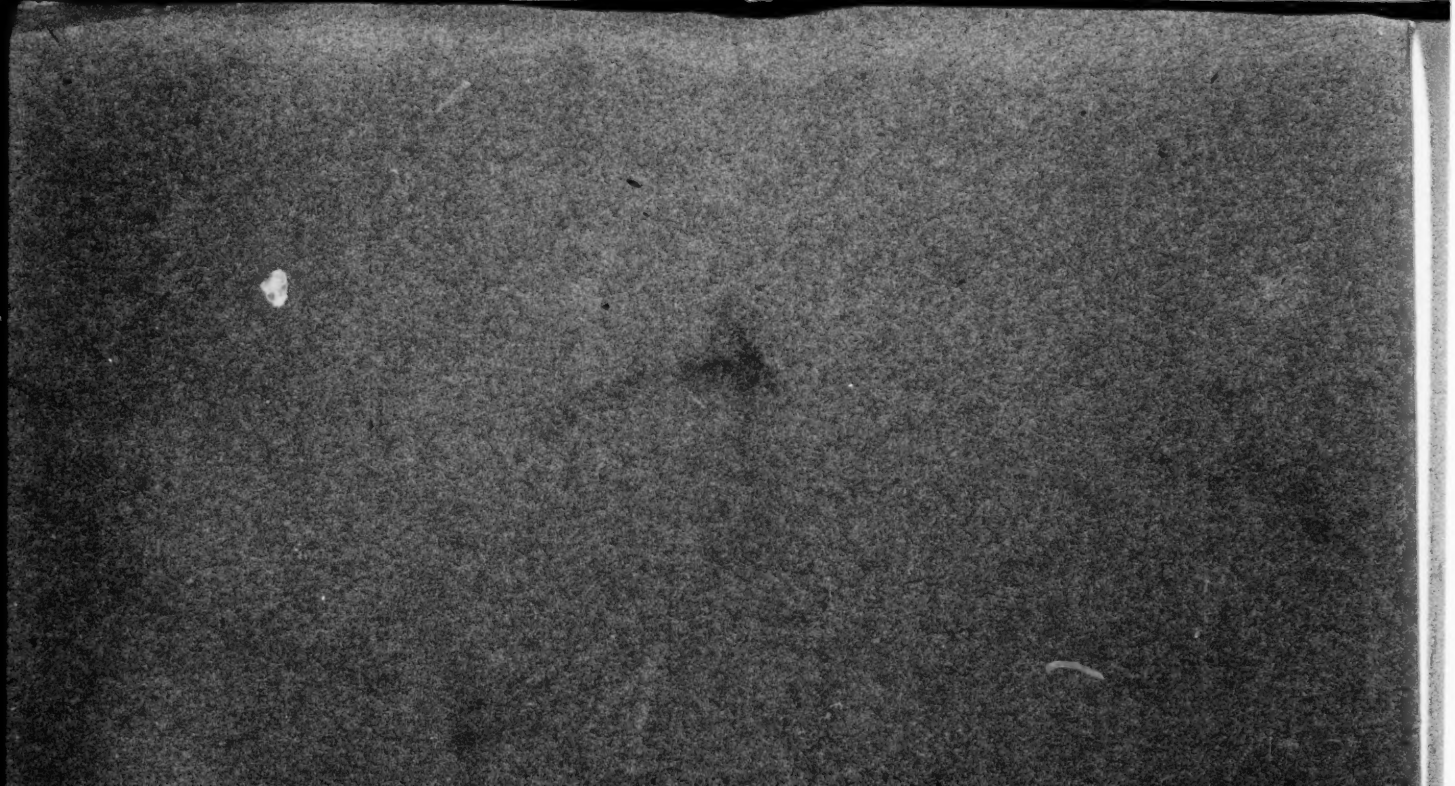

(29,935)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 625

OHIO UTILITIES COMPANY, PLAINTIFF IN ERROR,

vs.

PUBLIC UTILITIES COMMISSION OF OHIO

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO

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[fols. 1-3] **SUPREME COURT OF OHIO**

No. 17825

THE OHIO UTILITIES COMPANY, a Corporation Organized and Existing under the Laws of the State of Ohio, Plaintiff in Error,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO, Defendants in Error

PETITION IN ERROR—Filed January 23, 1923

The plaintiff in error says it is a corporation organized under the laws of the State of Ohio and owns and operates certain public utility properties in the State of Ohio for the purpose of supplying electricity for light, heat and power; and artificial gas for light, heat and power, to various municipalties and the inhabitants thereof within the State of Ohio; that the village of Hillsboro is a municipal corporation under the laws of the State of Ohio; that said village of Hillsboro is one of the municipalities in which the plaintiff in [fol. 4] error is engaged in the operation of an electric light, heat and power property, and an artificial gas property for the purposes above set forth.

The plaintiff in error further says that on the twenty-seventh day of July, 1920, it presented to and filed with the defendant in error, The Public Utilities Commission of Ohio, its certain rate schedule for electric service in the village of Hillsboro, Ohio, known and styled as Schedule P. U. C. O. No. 3, of Hillsboro Division of The Ohio Utilities Company, effective August 26, 1920, and its certain rate schedule for gas service known as P. U. C. O. No. 2, effective August 26, 1920; that on August 9, 1920, J. G. Perin, Secretary of the Business Men's Association at Hillsboro, Ohio, filed a protest as against said rate schedules P. U. C. O. No. 2 and No. 3; that on August 20, 1920, the defendant in error ordered the suspension of said schedules P. U. C. O. No. 2 and No. 3, and directed a hearing thereon on October 5, 1920, said proceeding being styled, numbered and known as "Advanced Utilities Rate Proceeding No. 21;" that upon September 15, 1920, the plaintiff in error made application to the defendant in error that an order be made fixing the amount of bond or undertaking to be given by the plaintiff in error to secure to it the right under the statute of the State of Ohio to collect said rates so provided and fixed in P. U. C. O. No. 2 and No. 3. The plaintiff in error further says that under an order of The Public Utilities Commission it filed with said Commission on the eighteenth day of September, 1920, its undertaking in the sum of Ten Thousand ($10,000) Dollars, conditioned that it will refund to each of its customers, public or private, the amount collected by it [fol. 5] in excess of the amount which shall finally be determined it was authorized to collect from such consumers; that said bond was

thereafter increased by an additional bond in the sum of Twenty-five Thousand ($25,000) Dollars.

The plaintiff in error further says that at a hearing before the defendant in error a certain order and judgment was entered on November 19, 1920, fixing and prescribing a rate for gas service to be rendered to said village of Hillsboro and its inhabitants and said cause as to the rate for electric service continued to a later date; that on July 5, 1921, after a hearing before The Public Utilities Commission of Ohio, said Commission issued its order prescribing and fixing certain rates for electric service lower than those contained in said P. U. C. O. No. 3; that on July 25, 1921, an application for a rehearing of said cause was filed with said Commission and on August 19, 1922, said application for rehearing was granted by the said The Public Utilities Commission and on October 17, 1922, and November 2, 1922, said rehearing was had before The Public Utilities Commission; that on December 12, 1922, said Commission, by its order, judgment and decree, vacated and set aside for lighting rates prescribed in P. U. C. O. No. 3, and ordered substituted therefor certain rates then fixed and determined by it, lower in amount than the rates for electricity for lighting contained in said P. U. C. O. No. 3; that thereupon on December 29, 1922, the plaintiff in error filed its petition for a rehearing of said cause, setting forth in said application certain reasons and grounds therefor, [fol. 6] praying that said Commission change and vacate said decision and order theretofore made in said cause upon the grounds set forth; that on January 10, 1923, The Public Utilities Commission of Ohio, the defendant in error herein, denied said application for said rehearing; that said entry of January 10, 1923, is the final order and entry made in said cause:

To all of which orders, acts and proceedings of said defendant in error in the premises, this plaintiff in error at the time excepted.

All the above is shown upon the records of the said Commission and its proceedings:

There is error prejudicial to this plaintiff in error in said order and proceedings of said The Public Utilities Commission of Ohio in the respects following, to-wit:

1. That said defendant in error erred in denying the petition of this plaintiff in error for a rehearing in said matter.

2. That said The Public Utilities Commission of Ohio erred in refusing to change or vacate its decision and order made in said proceeding.

3. That said finding of facts by said Commission was erroneous in finding.

"that the fair present value of the physical property of the respondent, used and useful for the convenience of the public in furnishing of electrical service to consumers thereof in the village of Hillsboro, Ohio, as of August 30, 1920, in the sum of..... $138,521.00

And, there having been no proof of the actual ex-
[fol. 7] penditure of moneys for the ordinarily accepted intangibles and overheads, allowances should only be made for the following items in the following amounts, viz:

Taxes during construction	1,081.00
Interest during construction	1,500.00
That to maintain an adequate stock of materials and supplies, there should be allowed the sum of	1,071.00
That, in the carrying on of its electric service in said village, the respondent should have a working capital of	2,882.00
Determining the present value of said property as a whole, as of said date, August 30, 1920, to be the sum of	145,055.00

That the reasonable operating expenses (including an allowance of $3,000.00 for taxes), for the furnishing of respondent's said electrical service in said village for a period of one year should, and, with a reasonable efficient administration of the affairs of said company, could be the sum of $37,608.00;

That a reasonable annual allowance for depreciation upon said property will be five per centum of the said present value thereof, to-wit; the sum of $7,252.00;

That, therefore, the actual cost of furnishing electrical service for a period of one year in the village of Hillsboro, Ohio, should be the sum of $44,860.00;

That a reasonable return upon the respondent's said property, so used in the furnishing of said service in said village, for the period of one year would be the sum of $8,703.00;

[fol. 8] That from its said investigation aforesaid, it is apparent that this plant has been uneconomically planned and constructed, in many regards inefficiently operated, and the service conducted without that regard for attracting new business and encouraging the greater use of the product which would reflect the saving per unit incident to increased volume of output, recognized as a basic principle in the conduct of commercial enterprises:

That, at this time the respondent, in recognition of its responsibilities in this regard, is actually revamping its said plant for the purpose of securing an economical and efficient operation,

That the public may not be penalized by extortionate rates for the ommissions of the administration of a public Utility's affairs;

That, under an efficient administration and economical conduct of respondent's electrical plant in the said village of Hillsboro, Ohio, the schedule of rates and charges provided and prescribed by this order, made and entered herein as of date, July 5, 1921, will produce an annual gross revenue of $53,565.00, an amount sufficient to pay the above reasonable cost of furnishing said service, and provide the said depreciation reserve charge and the said net return upon respondent's said property."

That said finding of facts was not sustained by the weight of the evidence or any evidence adduced at any of the hearings of said cause before the said Commission.

4. That the finding of facts made by said The Public Utilities Commission was erroneous and was not sustained by the weight of the evidence or any evidence adduced on the hearing of said [fol. 9] cause in that said evidence clearly showed that the plaintiff in error was entitled to receive for residence and commercial lighting 15 cents per kilowatt hour for the first 200 kilowatt hours per month net, 12 cents per kilowatt hour for all over 200 kilowatt hours per month net, private garage automobile charging minimum bill $2.00 per month.

5. That the said judgment, decision and order if enforced, will confiscate and take from said The Ohio Utilities Company its property at Hillsboro, Ohio, without due process of law, and without allowing to said company an adequate—or, in fact, any substantial return on the value of said property,—in contravention of the laws and constitution of the State of Ohio and of the United States.

6. That said judgment, decision and order are contrary to the findings as made by the Special examiner and the chief engineer of this Commission as shown by their reports, copies of which have heretofore been introduced as evidence in this case; that a later report of the approximate date of July 25, 1922, of the earnings and operating expenses and net earnings of the electrical property of the Hillsboro Division of The Ohio Utilities Company was made by a special examiner of The Public Utilities Commission—which this complainant, under a ruling and order of the Commission, was not permitted to inspect or examine—but which report was considered by the Commission as a part of the evidence in this cause; and that no opportunity was afforded this complainant to examine in chief or cross-examine said special examiner with reference to said report used and considered by the Commission as evidence in this case.

[fol. 10] 7. That the Commission erred in failing to fix a tentative valuation of the property of The Ohio Utilities Company—Hillsboro Division—used and useful in furnishing electrical service to the said village of Hillsboro, Ohio, and its inhabitants, and permit this respondent to file a protest and have a hearing thereon before said valuation was made final—but that contrary to and against the law of the State of Ohio said Commission arbitrarily fixed a final value on said property at the time and in the same order, (to-wit, the final order herein), fixing the rates to be charged by this respondent.

8. That the findings, order and judgment of this Commission, as announced in its order under date of December 12, 1922, is made on the assumption of an untrue condition existing as of the approximate date of said order,—instead of being based on the facts of the true and actual condition of the property used and useful in the service, the cost of service, the revenue and net return derived from said property as of the date of the filing of said schedule in said P.

U. C. O. No. 2 and No. 3, and said protest thereto at which time a cause of complaint, if any, accrued to the complainant, as against The Ohio Utilities Company.

9. That the judgment, decision and order as made by this Commission was upon the arbitrary and personal opinion of said Commission to the effect that the cost of material and labor of said Company at its plant at Hillsboro, Ohio, would be reduced over the cost of said material and labor shown by the evidence and as found by the special examiner and the chief engineer of said Commission and a high esti- [fol. 11] mate of gross earnings made by the Commission without any evidence to sustain same; that the Commission in making said findings wholly disregarded all testimony, weight of evidence and rules of law applicable to a hearing and determination of a judicial proceedings or a finding of facts by a judicial tribunal.

10. That the judgment, decision and order of the Commission are contrary to the laws of the State of Ohio.

11. That the said judgment, decision and order of said Commission are contrary to the weight of, against and not supported by any testimony offered at the hearing of said cause before this Commission.

12. That said order and findings therein are unreasonable, unjust, illegal and contrary to law; that said judgment, decision and order of the Commission are wholly against the weight of the testimony, the laws of the land, and is an injustice to The Ohio Utilities Company, the plaintiff in error.

Wherefore the plaintiff in error prays that the findings of The Public Utilities Commission of Ohio so heretofore made in the premises be reversed and vacated by this court and that this plaintiff in error be restored to all things it has lost by reason of the aforesaid orders of the aforesaid The Public Utilities Commission, defendant in error.

(Signed) J. C. Martin, Attorney for Plaintiff in Error.

SUPREME COURT OF THE STATE OF OHIO

WAIVER OF SUMMONS

The Public Utilities Commission of Ohio, defendant in error in this cause hereby waivers the issuance and service herein and voluntarily enters its appearance herein.

The Public Utilities Commission of Ohio. George T. Poor, Chairman.

[fol. 12] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 21

In the Matter of the Proposed Increased Rates of THE OHIO UTILITIES COMPANY for Gas and Electric Service, Filed to Become Effective August 26, 1920

DOCKET ENTRIES

1920, July 27.—Schedule designated P. U. C. O. No. 3 for electric service applying to the village of Hillsboro, Ohio, and schdule designated P. U. C. O. No. 2 for artificial gas service applying to said village, proffered for filing to become effective August 26, 1920.

1920, August 11.—Complaint and protest against said schedules filed by J. C. Perin on behalf of the Business Men's Association of Hillsboro, Ohio.

1920, August 20.—Order issued by Commission suspending said schedule for a period of thirty days from August 26, 1920. Hearing assigned for 10:30 a. m., Tuesday, October 5, 1920. Parties interested served with copies of such order.

1920, September 17.—Application filed by respondent company asking Commission to determine amount of bond.

1920, September 18.—Entry made by Commission fixing amount [fol. 13] of undertaking in the sum of ten thousand dollars. Parties interested served with copies of such entry.

1920, September 20.—Undertaking in the sum of ten thousand dollars filed by respondent.

1920, September 21.—Entry made by Commission approving undertaking. Parties interested served with copies of said entry.

1920, October 5.—Hearing held. Exhibits filed. Exhibits "A," "B," "C," "D" and "E," containing data from the Hillsboro department of The Ohio Utilities Company, Hillsboro, Ohio.

1920, October 29.—Proceedings and testimony received from stenographers.

1920, November 5.—Referred to electrical department for investigation and report.

1920, November 19.—Order issued by Commission authorizing schedule P. U. C. O. No. 2 for artificial gas service to become effective, and providing that respondent make necessary repairs to its plant and resume the furnishing of service to its customers. Parties interested served with copies of such order.

1921, May 6.—Engineers' report on the proposed rates and charges for electric service, filed with Commission.

1921, July 5.—Order issued by Commission providing that certain reductions be made in the proposed rates and charges for residence and commercial lighting, and private garage automobile charging; and for making proper refunds to consumers. Copies of said order served on parties in interest.

[fol. 14] 1921, July 25.—Application for rehearing filed by The Ohio Utilities Company.

1921, July 26.—Hearing on application tentatively assigned for Friday, August 12, 1921, at nine o'clock a. m., central standard time.

1921, August 9.—Entry made by Commission tentatively reassigning matter of application for rehearing for argument at nine o'clock a. m., C. S. T., Friday, September 2, 1921. Copies of such entry served upon parties in interest.

1921, August 29.—Entry made by Commission reassigning matter of application for rehearing for argument at ten o'clock a. m., C. S. T., Friday, October 14, 1921. Copies of such entry served upon parties in interest.

1921, October 11.—Application asking that assignment for hearing October 14, 1921, be vacated, filed by The Utilities Company.

1921, October 11.—Entry made by Commission reassigning hearing for ten o'clock a. m., central standard time, Friday, December 2, 1921. Parties interested served with copies of such entry.

1921, December 2.—Entry made by Commission further postponing hearing to ten o'clock a. m., central standard time, Friday, January 20, 1922. Parties interested served with copies of such entry.

1922, January 20.—Hearing; oral argument on motion for rehearing.

1922, January 26.—Brief in support of application for rehearing, filed by The Ohio Utilities Company.

1922, July 31.—Supplemental report filed by Commission's engineers.

[fol. 15] 1922, August 19.—Entry made by Commission granting The Ohio Utilities Company a rehearing. Said rehearing assigned for Tuesday, October 17, 1922, at ten o'clock a. m. Parties interested served with copies of such entry.

1922, October 17.—Rehearing held.

Exhibits filed by The Ohio Utilities Company: Exhibit "A-1." Exhibit "B," (record of testimony taken at former hearing).

Exhibit "C."

Adjourned for further hearing to Thursday, November 2, 1922, at ten o'clock a. m.

1921, November 1.—Transcript of proceedings and testimony of hearing held October 17, 1922, received from stenographers.

1922, November 2.—Hearing resumed pursuant to adjournment. Hearing concluded.

1922, November 4.—Additional undertaking in the sum of twenty-five thousand ($25,000.00) dollars filed by respondent.

1922, November 10.—Transcript of proceedings and testimony of hearing held November 2, 1922, received from stenographers.

1922, December 12.—Order issued by Commission fixing the just and reasonable rates to be charged by The Ohio Utilities Company for the furnishing of electric service in the village of Hillsboro, Ohio. Copies of such order served on parties in interest.

1922, December 29.—Application for rehearing filed by The Ohio Utilities Company.

[fol. 16] 1923, January 10.—Entry made by Commission deny-

ing application for rehearing. Parties interested served with copies of such entry.

1923, January 23.—Service of summons in error Supreme Court waived.

Journal Entries

August 20, 1920.—Entry suspending schedules. The Ohio Utilities Company having, on the twenty-seventh day of July, 1920, filed with this Commission its schedule designated P. U. C. O. No. 2, providing certain increased rates and charges for artificial gas service and schedule P. U. C. O. No. 3, providing certain increased rates and charges for electric service furnished to the city of Hillsboro, Ohio, both being filed to become effective August 26, 1920;

And the Business Men's Association, by its secretary, J. G. Perin, having, under date of August 9, 1920, filed protest against such rates, alleging that such increases are and will be unjust, unreasonable and excessive, and petitioning the Commission to suspend the going into effect of such rates set forth in said schedule, and to fix and determine in lieu thereof a schedule of just and reasonable rates, and charges for such service, and the Commission finding that the rights and interests of the public may be injuriously affected by such increase in said rates and charges, it is

Ordered, that this Commission enter upon a hearing concerning the propriety of said increased rates and charges set forth in said schedule, and that said hearing be begun at ten o'clock a. m., cen-[fol. 17] tral standard time, Tuesday, October 5, 1920, at the hearing room of this Commission in the State Office Building, Columbus, Ohio; it is further

Ordered, that the operation and use of the rates and charges contained in said schedule be suspended and that the effective dates thereof be, and hereby it is postponed for a period of thirty days from August 26, 1920. It is further

Ordered, that a copy of this order be filed with said schedule in this office, and that a copy be forthwith served upon the said The Ohio Utilities Company, which hereby is made a respondent in this proceeding and notified of the time and place of the hearing herein assigned.

September 18, 1920.—Entry fixing amount of undertaking. This day this matter came on for consideration upon the election of The Ohio Utilities Company to give to this Commission its undertaking or bond, in such amount as the Commission shall determine, and thereupon to impose, maintain and collect the rates and charges for its service, the use and operation of which were suspended by the order made and entered herein as of date August 20, 1920, and the application of the said The Ohio Utilities Company, for a fixing of the amount of such undertaking so to be filed:

Upon consideration whereof and being fully advised in the premises, the Commission finds and does direct the said The Ohio Utilities Company, that it may collect the rates and charges, the use and operation of which were herein suspended, to file with this Commis-

sion its undertaking without, at this time, other surety, in the sum [fol. 18] of ten thousand dollars ($10,000.00), conditioned in conformity to law.

September 21, 1920.—Entry approving undertaking. The Commission having theretofore determined the amount of the undertaking to be given by the said The Ohio Utilities Company on its election to charge the increased rates carried in its schedules for gas and electric service, during the period of suspension herein made, to be the sum of ten thousand dollars ($10,000.00) and said company having tendered for filing with and approved by this Commission its undertaking in the sum of ten thousand dollars ($10,000.00), over the signature and attestation of its president and secretary, together with a certified copy of the resolution of its board of directors authorizing such action by said officials, and it appearing that the conditions of said undertaking are in conformity to law, said undertaking therefore is approved and permitted to be filed on the further condition that the Commission reserves to itself the right, always, to change the amount or modify the conditions of said undertaking, or to require said company to furnish other and additional surety, or sureties, thereon.

November 19, 1920.—Entry rescinding order of suspension of schedule for artificial gas service. The Commission having heretofore, by order duly made herein, suspended the going into effect, among other rates, of the proposed increased rates for artificial gas service at Hillsboro, Ohio, contained in a schedule designated P. U. C. O. No. 2, filed by The Ohio Utilities Company to become effective August 26, 1920, (which proposed rates were thereafter collected [fol. 19] by said respondent under authority of its undertaking duly filed herein), and entered upon a hearing and investigation to determine the propriety of said proposed increased rates;

This day, after full hearing, due notice of the time and place of which was given pursuant to law, said matter came on for consideration upon the evidence submitted at said hearing and the report of this Commission's engineers and experts of their independent investigation and inquiry into said matter.

Upon consideration whereof, and being duly advised in the premises, the Commission finds, taking into consideration the value of respondent's property, used and useful for the convenience of the public in the furnishing of said service, the cost of furnishing said service and the necessity for making reservations from income for depreciation and contingencies, that the proposed rates and charges for the furnishing of artificial gas service in the city of Hillsboro, Ohio, set forth and contained in the schedule, designated P. U. C. O. No. 2, of The Ohio Utilities Company, are not unjust, unreasonable or excessive, and will not yield said company a greater rate of return than it is entitled to earn upon its said property. It is, therefore,

Ordered, that the order, heretofore made and entered herein, suspending the going into effect of the rates contained in said proposed schedule of said The Ohio Utilities Company be, and hereby it is rescinded.

And the Commission coming now to consider the matter of the furnishing of said artificial gas service by said The Ohio Utilities [fol. 20] Company in the said city of Hillsboro, Ohio, and having herein before found and determined to be not unreasonable, unjust or excessive the rates and charges for said service proposed and established by said The Ohio Utilities Company, and it appearing from the complaints of several residents and citizens of Hillsboro, Ohio, and the report of the engineer of this Commission detailed to investigate such complaints, that said company discontinued the operation of its facilities for the furnishing of artificial gas service in said city of Hillsboro, Ohio, and the furnishing of such service to its consumers and the public upon the fourteenth day of October, 1920, and has not since nor to this date resumed such operation and the furnishing of said service, and it appearing further that said service may be resumed upon either the repairing of its present gas holder in said city of Hillsboro, Ohio, or the substitution therefor of a new holder, and it appearing further that said operations were abandoned and the furnishing of said service discontinued without the application to, or authority from this Commission as provided by Section 504-2-3, General Code of Ohio;

The Commission, from the said complaints and the aforesaid report of its engineer detailed to investigate the same, further finds that the interests of the public have been injuriously affected by the said unlawful discontinuance of said service and abandonment of said facilities, and that the public welfare requires the immediate resumption of said operations and restoration of said service. It is, therefore, further

[fol. 21] Ordered, that said The Ohio Utilities Company be, and hereby it is notified, directed and required forthwith to resume the operation of its artificial gas plant and the furnishing of artificial gas service to its consumers and the public in the city of Hillsboro, Ohio, and to make all needful repairs or replacements necessary to enable it to furnish an adequate service.

July 5, 1921.—Order fixing just and reasonable rates for electric service. The Commission having heretofore, upon complaint filed by the Business Men's Association of Hillsboro, Ohio, by order duly made herein, suspended the going into effect of the proposed increased rates and charges for electric service at Hillsboro, Ohio, contained in a schedule designated P. U. C. O. No. 3, filed by The Ohio Utilities Company to become effective August 25, 1920, (which proposed rates and charges were thereafter collected by said respondent under authority of its undertaking duly filed herein), and entered upon an investigation to determine the propriety of said proposed increased rates;

This day, after full hearing, due notice of the time and place of which was given pursuant to law, said matter came on for consideration.

The Commission, being fully advised in the premises, and taking into consideration the value of the respondent's property used and useful for the convenience of the public in the furnishing of said service, the cost of furnishing said service and the necessity for mak-

ing reservations from income for depreciation and contingencies, finds:

[fol. 22] That the said proposed rates and charges set forth in said schedule P. U. C. O. No. 3—save and except the following:

Residence and Commercial Lighting

15¢ per kilowatt hour for the first 200 kilowatt hours, net.
12¢ per kilowatt hour for all over 200 kilowatt hours, net.

Private Garage Automobile Charging

Minimum bill, $2.00 per month, which rates and charges in so far as they exceeded the following:

Residence and Commercial Lighting

12¢ per kilowatt hour for the first 200 kilowatt hours, net.
10¢ per kilowatt hour for all over 200 kilowatt hours, net.

Private Garage Automobile Charging

Minimum bill, $1.00 per month, net,

hereby are found and determined to be excessive, unjust and unreasonable—are not unjust, unreasonable or excessive, and will not yield a rate of return greater than the said The Ohio Utilities Company is entitled to earn upon its said property. It is therefore,

Ordered, that the following rates and charges:

Residence and Commercial Lighting

12¢ per kilowatt hour for the first 200 kilowatt hours, net.
10¢ per kilowatt hour for all over 200 hours, net.

[fol. 23] Private Garage and Automobile Charging

Minimum bill, $1.00 per month, net.

be substituted for the rates and charges hereinbefore found and determined to be excessive, unjust and unreasonable. It is further

Ordered, that said The Ohio Utilities Company be, and hereby it is notified, directed and required to correct its schedule to conform to the findings hereinbefore set forth. It is further

Ordered, that authority be, and hereby it is granted said company to correct by interlining in red ink, the schedules now on file with this Commission to conform hereto. It is further

Ordered, that said The Ohio Utilities Company be, and it hereby is notified, directed and required to refund to all consumers served under said schedule designated P. U. C. O. No. 3, either in cash or by credit on current bills, any difference there may be in the rates and

charges paid by such consumers during the pendency of this action and the rates and charges herein found by the Commission to be just and reasonable, whereupon the undertaking heretofore filed herein shall be discharged and released. It is further

Ordered, that as to all other matters, this investigation be, and hereby it is discontinued.

August 9, 1921.—Entry of assignment for argument on application for rehearing. Upon application of The Ohio Utilities Company and for good cause shown, assignment for argument on the application for rehearing in this matter for Friday, August 12, 1921, [fol. 24] hereby is vacated and tentatively reassigned for Friday, September 2, 1921, at nine o'clock a. m., central standard time.

August 29, 1921.—Entry of reassignment. Upon application of The Ohio Utilities Company, assignment for argument on the application for rehearing in this matter for Friday, September 2, 1921, hereby is vacated and reassigned for Friday, October 14, 1921, at ten o'clock a. m., central standard time.

October 11, 1921.—Entry of reassignment. By agreement of parties, assignment of the hearing in the above matter for Friday, October 14, 1921, hereby is vacated and reassigned for ten o'clock a. m., central standard time, Friday, December 2, 1921, at the hearing room of this Commission, State Office Building, Columbus, Ohio.

December 2, 1921.—Entry of reassignment. Upon application of protestant, assignment of hearing in the above matter for Friday, December 2, 1921, hereby is vacated and reassigned for ten o'clock a. m., central standard time, Friday, January 20, 1922, at the hearing room of this Commission, State Office Building, Columbus, Ohio.

August 19, 1922.—Entry granting rehearing. This day, after full hearing and argument by counsel, this matter came on for further consideration upon the application of the respondent, The Ohio Utilities Company, asking a rehearing with respect to the matters and things decided and determined by the order made and entered herein upon the fifth day of July, 1921.

The Commission, being fully advised in the premises, finds that sufficient cause has been made to appear for a rehearing of said matter. It is, therefore,

[fol. 25] Ordered, that said The Ohio Utilities Company be, and hereby it is granted a rehearing with respect to the matters and things decided upon the fifth day of July, 1921, and that said rehearing be, and hereby it is assigned for Tuesday, October 17, 1922, at ten o'clock a. m., central standard time, at the hearing room of this commission in the State Office Building, Columbus, Ohio.

January 10, 1923.—Entry denying application for rehearing. This day this matter came on for further consideration upon the application of the respondent, The Ohio Utilities Company, asking a rehearing on the matters and things determined by the finding and order made and entered herein upon the twelfth day of December, 1922, for the reasons and upon the grounds set forth in said application.

The Commission, being fully advised in the premises, finds that

sufficient cause has not been made to appear for such rehearing. It is, therefore,

Ordered, that the application of The Ohio Utilities Company for a rehearing of the matters and things determined by the finding and order, made and entered herein as of date December 12, 1923, upon the grounds and for the reasons set forth therein, be, and hereby the same is denied.

To which order of the Commission denying its said application for a rehearing, upon the grounds and for the reasons set forth therein, of the matters and things determined by the finding and order, made and entered herein upon the twelfth day of December, 1922, said The Ohio Utilities Company then excepted and here now excepts, and its exceptions here are noted of record.

[fol. 26] PROCEEDINGS BEFORE HONORABLE BEECHER W. WALTERMIRE AND BYRON M. CLEN DENING, PUBLIC UTILITIES COMMISSIONERS

Morning Session, Tuesday, October 5, 1920.

Commissioner Waltermire: Proceed.

Mr. Martin: If the Commission please, the matter that we have for hearing today is the Protest filed by the city of Hillsboro against two schedules of rates filed by The Ohio Utilities Company. One schedule applies to the artificial gas service and the other to the electric service at the city of Hillsboro.

The Company has for a number of years been operating these plants, and, as our figures will show, operating at a loss. So that the time arrived when that had to be corrected; and we instituted a new rate, both for gas and electric service, filed July 27, effective August 26, 1920. To this rate a protest was filed, and the Commission in its wisdom placed the date ahead to today for hearing, so that the first month's operation under the new rate would be effective and the result thereof ascertained.

The Company gave bond to refund any excess that might be collected beyond that which the Commission might ultimately fix as the just and proper rate. So that we not only have the past experience of a number of months, which we have carried back to January 1, 1919, and up to September 1, 1920, but we also have the month of September, which reflects the rate as actually put in force and the amount of the charges thereunder.

[fol. 27] Of course, in keeping utility books and in making up our figures, we are obliged to charge all accounts as good and collectible until such a period—possibly six months to eight months after they are made, when an adjustment is made, and all bad accounts are deducted. But these operations in September, at the new rate, will show the Commission exactly what this rate will do for us in the way of revenue.

Now, there being two distinct plants, the gas plant and the electric

plant, and they being separated so far as labor and material are concerned, as well as revenues, I am of the opinion that it would be better for us to take one of these operations at a time so that we might show the costs and revenues and the return, or the lack of return, say on the gas plant first, so that that story will be one concrete proposition, and then later take up the electric end; as neither of them will necessitate but a short time and can be finished I think by the noon hour.

After disposing of the gas proposition, we will take up the electric end and embody that into one concrete proposition, so that the stories of each will be separate and can be so considered; and, with the permission of the Commission, I will so treat the proposition.

Mr. Barrere: That plan is perfectly satisfactory to the protestants.

Now, if Your Honors please, on behalf of the people of Hillsboro, whom I represent more in the capacity of a citizen of the community rather than as counsel, and being president of the Business Men's Association, and really not in the practice of the law at the present [fol. 28] time, I want to say that on the gas end of it, that, from the nature of the service given at the present time, we think that any change, no matter what it is, is excessive; that until this company can give at least a reasonably decent service that it should not ask or be permitted to charge a higher rate than the one charged at the present time; that, to use the langauge of the statute, that the present service is insufficient, inefficient and improper. I do not believe that even the officials of the company will claim for one minute that they have given anything like good service in gas for several years.

In the electrical end of it, we think that the increase asked for is more than should be granted. Within the last few months there has been a service demand charge placed upon power users which has increased what they have been compelled to pay about 50%. The increase now further asked will place an additional burden of about 50%—will place an additional burden upon the power users of about 50%, and an additional charge of about 50% upon all users of current.

Now, while we understand that conditions have changed and that unquestionably it is more expensive to conduct a plant than it was formerly, we believe that this is asking for more than is really needed. We want to be fair with the Light Company and we want them to have a reasonable and fair rate, but we also want the people of the community to be protected and not be required to pay an exorbitant rate. We are simply here for the purpose of trying to assist in getting the facts before the Commission as best we can.

Commissioner Waltermire: This is not an appeal from an ordinance?

Mr. Martin: No, sir. It is a protest on a rate filed.

[fol. 29] J. J. Hickson, called as a witness on behalf of The Ohio Utilities Company, being first duly sworn, testified as follows:

Examined by Mr. Martin:

Q. Please state your name and occupation, Mr. Hickson.

A. J. J. Hickson, 1903 North Fourth Street, Columbus, Ohio; occupation, electrical engineer for The Ohio Utilities Company.

Q. Now, Mr. Hickson, I wish to call your attention to the schedule which you have before you, and copies of which have been furnished the Commission and opposing counsel, and desire that you go into detail with reference to the figures shown in this schedule, both as to months and periods, and advise the Commission as to the showing of costs, revenues,—the net revenue or net loss of the gas plant of The Ohio Utilities Company at Hillsboro, Ohio?

A. Beginning on the first sheet, and under date of January, 1919, we have set forth the fuel cost, production labor, taxes and other expenses necessary in the business; the listed total of gas expense; the thousands of cubic feet of gas sold; the gas revenue for the month of January, 1919; the revenue received from tar and coke as of the same month; the addition of the two, or the gross revenue for January, 1919; and, as will be seen, when considered in accordance to the revenue and expenses, we have a net loss there of $84.49.

Q. And in this item is there anything allowed for interest or depreciation on the property or any return on the investment?

A. This item contains no depreciation or return on the property. It contains only operating expenses and taxes and has not even paid [fol. 30] enough returns to pay those.

Q. Now, with a similar listing of expenses and revenues, please announce the results for the following months, as shown by your schedule?

A. As shown on the sheet, by going down month by month, there is recorded the history of the gas plant operation. It will be noted that in the month of April, 1919, the expenses were not quite as much as the revenues received, but in the next month following, it returned to the red, or loss, side. During June, which is the summer time, the operations were not quite as expensive as the revenue received, and the plant returned to paying a slight amount of returns and depreciation, but only a very slight amount. As you continue down the sheet and as more gas was sold, and as coal costs began to ascend, we note that the net revenue began to be less and less, and the net losses become more and more. Even with the September operation under the purposed rate, the revenues were not sufficient to counteract the loss, and September again showed a loss, accountable principally to the high cost of coal.

Q. The September rates are figured at the new rate of $2.00 per thousand feet of gas.

A. Yes, sir.

Q. And the gross revenue is the amount that is charged upon our books for gas delivered, regardless of collections or otherwise?

A. For gas delivered and for tar and coke, the gross revenue contains these figures.

Q. And it shows a loss at the new rate of $2.00 per thousand of $348.93 for the month?

A. Yes, sir.

Q. The additional cost of coal is made up of two items, freights [fol. 31] and cost of coal at the mines?

A. Plus a slight unloading charge, as allowed by the Commission, as the cost of coal used.

Q. The coal cost then is actually the cost of the coal in the bins.

A. The coal cost is actually the coal in the bins; yes, sir.

Q. Which included the cost at the mine, plus the freight and plus the cost of unloading?

A. Yes, sir.

Q. Now, Mr. Hickson, have you tabulated the figures of costs and revenues for periods of months, and if so, I wish you would advise the Commission as to the result of that tabulation?

A. Yes, sir, on the next sheet, under the one which you have been looking at——

Commissioner Clendenning: Wait a moment, before we leave this first page; I see in September your gas revenue increased from $864.00 in August to $1,217.00, an increase not only over the preceding month, but an increase over the corresponding month of the preceding year. What occasioned that rise in the revenue in September of this year?

A. In September this year——

Mr. Barrere: That is the increased rate charged in that month.

Commissioner Clendenning: Oh, I see.

Mr. Martin: You see we have one month at the new rate.

Commissioner Clendenning: I see. Go ahead.

The Witness: Now on the next sheet we have listed the operation in periods of six months, as far as the even six months periods may go, and then again have set forth the individual months' operation. In this sheet we will note, from the period from January 1, 1919, to [fol. 32] June 30, 1919, it operated at a loss of $1,059.32, and it would have needed at that time an increase in the rate to have amply taken care of the expenses. From July 1st to December 31st, 1919, the plant was operated at a loss of $1,830.05, and again we see that it would have taken an increase even as far back as that to have made the plant pay its operating expenses. From January 1, 1920, to June 30, 1920, we see that the plant operated at a loss of $2,553.70, and it is the same story, that it needed an increased rate in order to amply take care of it.

Taking the whole 18 months' operation, or a summary of the above, the plant was operated at a loss of $5,443.07, simply as a summary of the preceding figures.

Taking the summer months of this present year, 1920, we have listed here July, August and September, and have listed the losses incurred during those months, and it will be noted now that on the right hand side of this sheet, under the column, "Percentage of Increase Required," are figures which set forth the per cent necessary

to increase the present rate in order to justly take care of this situation.

Commissioner Waltermire: You mean by "present rate," the rate that is now in effect?

The Witness: The rate that is now in effect; yes, sir.

Commissioner Waltermire: As of September?

The Witness: Yes, sir, the rate on which the September revenues were collected and which was our last filing, and which is now being contested.

By Mr. Martin:

[fol.33] Q. You have included a rate of return in these percentages of 8% on a valuation fixed heretofore and 5% depreciation, have you not?

A. Yes, sir.

Q. And according to these calculations, the month of September, during which there has been collected the new rate, or charged the new rate, of $2.00 per thousand, if there is a return of 8%, plus 5% for depreciation, it would require an additional rate of 93.2% of the present rate added to that present rate?

A. Yes, sir, and that also with there being no reduction in the amount of gas consumed, which sometimes follows, or practically always follows, an increase in a rate.

Commissioner Waltermire: That would result in a rate that would be practically prohibitive, wouldn't it?

Mr. Martin: That is the reason that I made the statement that we might be compelled to ask to withdraw from serving the community, because if the new rate, when applied, does not at least break even—we do not anticipate making the amount that we should make, to wit, the 8% plus 5% depreciation, but we do hope at least to break even on the gas property. And if that is not possible at a rate that is not prohibitive, then the only relief would be to apply, under the statute, for permission to close the gas plant entirely, which we will regret very much to do, for our purpose and object at the present time, with the high cost, is to barely break even on the proposition, so far as the gas property is concerned.

By Mr. Martin:

Q. Now, Mr. Hickson, I wish you would advise the Commission as to some of the expenses incurred by the company, as shown from [fol. 34] their books and vouchers, in the upkeep of this plant and the necessity for additional equipment for upkeep in the future, if service is to be continued?

A. If you will turn now to the last sheet of the three which you have, there are listed there items of expense that do not incur in any one month, and whose usefulness does not cease in that particular month, but which, from their nature, have to be proportioned over a period of months; for instance, the fire brick lining of a retort may

be put in new in one month, but in the course of operation the fire brick linings go out and need to be renewed at a later time; for instance, a period of six or nine months. It is, therefore, fair, we think, to apportion these expenses not to any one particular month, but over a period of months, which we have done on this sheet. It will be noted that Estimate No. 3, which was the installation of a new bench of retorts, which began on September 1, 1917, gave us a cost of $1,084.25. This was at first asked to be capitalized by the Commission, but later the engineers of the Commission did not allow us to capitalize this item, and it was returned to us as an operating expense. Therefore we show $1,084.25 apportioned over a period of months as an operating expense. The total charge from September 1, 1917, to and including August 31, 1920, covering 36 months, was $1,084.25. This expense, divided by 36 months, gives an expense pro rated, per month, of $30.12.

Further, Estimate No. 21, rebuilding gas plant, beginning August 30, 1918, gave us a charge of $5,300.84, and when placed before the Commission, for capitalization, the engineers allowed us [fol. 35] $3,730.84 to the capital account and returned to us an operating expense the difference, or $1,570.00.

The last item, refilling of the gas bench, finished on June 18, 1920, cost us $775.00. The total charge, August 31, 1918, to August 31, 1920, covering a period of 24 months, therefore, is $2,345.00.

The expenses per month, pro-rated, would then be $2,345.00, divided by 24, or $97.71.

Commissioner Waltermire: Do you say that was classified by the Commission's engineers as an operating expense?

The Witness: A certain portion of it was sent back to us to be charged as an operating expense and not allowed to capitalization.

Comissioner Waltermire: Well, wasn't the capitalization denied because it was a replacement charge?

The Witness: Well, Mr. Martin can answer that.

Mr. Martin: The gas retorts burned out. They are not replacements, but they are like any other piece of machinery, they wear out and burn out. Now in our capital account, those had originally been charged as a new article, or a new item, for capitalization. On filing our application for capitalization some weeks since, the Commissioner's engineer, Mr. White, made an examination of the accounts of the physical property, through his subordinates, and they eliminated these items, which they stated in their report should have been an operating expense; in other words, it was something that wore out in the course of producing the output, and that was what [fol. 36] they allowed us with reference to the retorts, and the scrubbers and purifiers were of the same character, except that they have a longer life, so they deducted from those the value of the old, at the time of the making of the appraisal since years since; when the Commission made an appraisal and fixed the value of the property at approximately $60,000.00, they deducted all this new apparatus, which was much larger in size and capable of carrying more capacity, they deducted from that the appraised value of the old as

fixed by the Commission at the time the property was taken over, when they fixed a valuation of approximately $60,000.00 on the property.

Commissioner Waltermire: I see the theory on which it was excluded from the capital account, but I cannot hardly conceive now that could be an operating expense. It seems to me it is something that should be paid out of the depreciation fund if you had any depreciation fund.

Mr. Martin: The second item, with reference to the scrubbers and purifiers, should be probably. The other item with reference to the bench of retorts is something that must be replaced in approximately six to nine months each time, and it is something that is an operating expense, just the same as the coal that you burn up, because in the production of the service it wears out; it gives out and must be replaced or you cannot go on. So that it is an item of expense that is ever with you if you are doing business.

Commissioner Waltermire: Well, perhaps in this particular case it don't make much difference what you call it, because you haven't the money to pay for it.

[fol. 37] Mr. Martin: No, it is all in the lost column. If it was a question of close figuring as to return, it would be different, but there is no return, so it makes no difference whether that item is in or out.

Commissioner Waltermire: Proceed.

By Mr. Martin:

Q. Now, Mr. Hickson, I wish you would advise the Commission if you have made an investigation and an estimate as to the cost of the replacement of the gase receiver and holder and advise them as to the probable cost that the company will be put to, in the event they are to continue service at Hillsboro in the future?

A. Upon an inspection, such as could be had by the Stacy Manufacturing Company, of Cincinnati, Ohio, who are special engineers in this line of work, they gave us their verdict, that the present holder is practically worthless and that it would be a waste of money to attempt to do anything further with it in the way of repairs. Then later, at our request, they submitted us a quotation as to what a new holder would cost us for their part of the rebuilding—their estimate on a new holder, their quotation on a new holder, is $7,180.00. A few days since I went to the property to investigate the condition of the walls and to ascertain what it would cost us to rebuild the walls sufficiently to take care of the new holder; the removing of the old holder, the cleaning out of the present gas holder pit, repairing the gas holder walls and building higher the pit walls to take care of the new holder would cost $1,320.00. Then we add to that 10% for contingencies, which is a per cent. used in all engineering operations, which amounts to $850.00, and the cost of en-

[fol. 38] gineering and supervision $1,275.00, which is 15%, and it figures a total cost to us under that estimate of $10,625.00, to take care of the expense to the Stacy Manufacturing Company of a new holder, and its installation at the gas plant at Hillsboro, Ohio.

Q. Now, the figures you have used in all your schedules are made from the monthly books and records of the utility, from which our reports to the Ohio Utilities Commission and the Ohio Tax Commission are made each year, and also to the federal government for federal taxation?

A. Yes, sir.

Mr. Martin: We have brought over the books for 20 months, the records, not anticipating that the Commission would go into it now, but of course these records are subject to the investigation of the Commission, its accountants and engineers, and they are here for the purpose of checking, or, rather, at our office, for the purpose of checking, at any time.

You may cross-examine.

Cross-examination.

By Mr. Barrere:

Q. What was the condition of this plant when purchased by The Ohio Utilities Company?

A. When it was purchased I was not with The Ohio Utilities Company and therefore cannot answer the question.

Q. What has been the nature of the service rendered to the public since you have been with the company, so far as gas is concerned?

A. So far as gas is concerned, I have not been on the property enough to rightly answer that question. My work with the company [fol. 39] has required my going there a few times to ascertain specific things, but not to dwell in the town to ascertain the condition of the service.

Q. What accounts for—under this heading, "Other Expenses" here, such a wide variance for the different months?

A. Such a wide variance for the different months?

Q. Yes; for example, I believe, under "Other Expenses," one month it runs as high as $389.00 and down as low as $60.00?

A. Well, we will take care of the high coal first; in the month of June, 1920, and it may have run some into July—I cannot give you the exact date—but in approximately that time trouble was had with the holder, and also—no; trouble was had on the street, which required the closing of the plant, and also some trouble was had with the holder at that time, and that column "Other Expenses," has to do with some of the expenses incurred at a particular time like that. Now, when such expenses were not incurred in a particular month—for example, to cite one month when the expenses were less, we have in that column only the expenses—some slight other expenses that were incurred in that month; therefore, the wide variance between $389.00 and some other figure, as you quoted, of $63.00 as the minimum.

Q. How many feet of gas will a ton of coal make?

A. The number of cubic feet of gas manufactured at that plant I could not tell you from a ton of coal.

Q. The reports here in the one instance show that with 75 tons you produced, or rather sold, 572,000 cubic feet of gas, but in another [fol. 40] month with 110 tons of coal you sold 564,000 cubic feet of gas?

A. Well, that is accountable for two reasons; one, the holder contains a number of thousands of cubic feet of gas, which varies from day to day, and the amount run in a month might begin with the holder nearly full, and also from the fact that the coal has been very hard to get and coal of widely differing qualities has necessarily had to be used in order to keep going at all, and at some times it has been impossible for us to get the coal which we would like to use and which would give us the best results, and we have been compelled to use the coal obtainable in order to keep going.

Q. That condition, though, you would consider as simply temporary, wouldn't you?

A. We trust that the car situation and the coal situation will improve, but who can answer that question today?

Q. How long have you been with the company, Mr. Hickson?

A. Since in June, 1920.

Q. Just since June, 1920?

A. Yes, sir.

Mr. Barrere: That is all.

Redirect examination.

By Mr. Martin:

Q. I might ask you, Mr. Hickson, if, upon your last visit to Hillsboro, you found that they were obliged to use Ohio coal to mix with the gas coal of West Virginia in order to burn the gas coal at all?

A. Upon my last visit to Hillsboro we were obliged to do that very thing; that is, we were compelled to mix some of our Ohio coal with the only available gas coal which we could obtain, which was not of [fol. 41] a grade that we would like to buy, in order to at all keep going.

Q. And the Ohio coal does not produce gas at all, that is, in any quantity?

A. It assisted mainly in keeping the West Virginia coal from lying too close, and thereby making a loss in that way. But it was the only method of operation open to us because a better grade of coal was not obtainable, and we have done our utmost to keep going.

Q. You might state to the Commission that we paid $10.25 a ton for that coal in West Virginia and it was all that we could get, or shut down.

A. (No reply.)

Recross-examination.

By Mr. Barrere:

Q. Mr. Hickson, under this "Production Labor," how much of that is labor at the plant and how much office labor?

A. Under the column "Production Labor," it is my judgment that it is totally at the plant.

Q. That is all at the plant?

A. Yes, sir.

Q. There is no charge for labor in this of what might be termed overhead labor?

A. This is simply production labor—labor at the plant.

Q. There is no charge toward the gas plant of what you would term overhead labor?

A. Well, that is an item that possibly——

Mr. Niles: That is in the other expenses.

The Witness: The production labor contains only the plant labor.

Q. Labor at the plant itself?

A. Yes, sir.

Mr. Martin: The $267.00 is divided among three men, so that the wages are not excessive.

[fol. 42] Q. Well, I notice there was quite a variance in the months; for example, you had $339.00 of production labor, and in September you had $267.00.

A. Once in a while there are five pay days on the weekly basis in one month, and in the following months only four will follow.

Commissioner Waltermire: How many consumers do you have?

The Witness: I have not the record of the number of consumers at the present time.

Commissioner Waltermire: Well, this holder that you speak of, you are still using it?

The Witness: Yes; that is, it was in the service when I was down there.

Commissioner Waltermire: Can it be so patched and repaired that it will get through the present winter, do you think?

The Witness: I question very much if anything can be done with it. It has already been worked with to the fullest extent by patching it on top with a preparation pasted down and then with concrete put on top of that; that is, a thin layer of concrete to assist in holding that down, in order to retain the gas, and everything has been done that can possibly be done.

Commissioner Waltermire: Is the gas now escaping from it?

The Witness: There will come a time—it will hold all right for a few days and then it will spring and then we have to patch it again as best we can.

Commissioner Waltermire: What is its capacity?

The Witness: Its capacity is in the neighborhood of 20,000 cubic [fol. 43] feet. It is in that neighborhood, but I cannot tell you exactly.

Commissioner Waltermire: And that will be enough to serve the consumers there for what length of time, do you know?

The Witness: I could not say how fast that goes down in case the gas plant stops for a short time, but—

[fol. 45]

Data from Hillsboro G

Period	Tons of fuel	Fuel cost per ton	Fuel cost	Production labor
Jan., 1919	..	....	$348.00	$197.00
Feb., 1919	..	....	326.25	202.00
Mar., 1919	..	....	348.00	226.25
April, 1919	..	....	304.50	187.00
May, 1919	..	....	326.15	221.25
June, 1919	75	$4.35	326.15	205.55
July, 1919	..	....	425.00	253.05
Aug., 1919	..	....	425.00	284.50
Sept., 1919	..	....	455.00	313.55
Oct., 1919	100	4.70	470.00	262.80
Nov., 1919	..	....	470.00	300.75
Dec., 1919	100	4.60	460.00	303.50
Jan., 1920	100	4.60	460.00	263.80
Feb., 1920	100	4.60	460.00	183.20
Mar., 1920	100	4.60	460.00	282.65
April, 1920	100	4.60	460.00	312.00
May, 1920	100	5.95	595.00	288.00
June, 1920	50	6.25	312.50	278.50
July, 1920	110*	8.00	880.00	288.00
Aug., 1920	126	6.20	781.20	339.00
Sept., 1920	120	9.75	1,170.00	267.00

NOTE.—Additional Operating Expense is inserted on recap. sheet follo

Exhibit A to Hickson's Testimony

om Hillsboro Gas Department of the Ohio Utilities Company, Hillsboro, Ohio

Production labor	Total production labor and fuel cost	Taxes	Other expenses	Additional operating expenses	Listed monthly total gas expense	M cubic feet gas sold
$197.00	$545.00	$80.30	$86.25	.....	$711.55	408.0
202.00	528.25	80.30	97.17	.....	705.72	414.0
226.25	574.25	80.30	93.60	.....	748.15	400.0
187.00	491.50	80.30	70.60	.....	542.40	446.0
221.25	547.40	80.30	81.35	.....	709.05	467.0
205.55	531.70	80.30	63.75	.....	675.75	572.0
253.05	676.05	80.30	100.36	.....	858.71	640.0
284.50	709.50	80.30	98.77	.....	888.57	689.0
313.55	768.55	80.30	342.09	.....	1,190.94	603.0
262.80	732.80	80.30	292.91	.....	1,106.01	467.2
300.75	770.75	80.30	239.40	.....	1,090.45	535.0
303.50	763.50	80.30	82.98	.....	926.78	564.0*
263.80	723.80	80.30	236.55	.....	1,040.65	541.3
183.20	643.20	80.30	142.57	.....	866.07	500.5
282.65	742.65	80.30	171.87	.....	994.82	536.1
312.00	772.00	80.30	133.87	.....	986.17	568.7
288.00	883.00	80.30	159.79	.....	1,123.09	438.2
278.50	591.00	80.30	389.46	.....	1,060.76	237.2
288.00	1,168.00	80.30	220.96	.....	1,469.26	564.3
339.00	1,120.20	80.30	176.83	.....	1,377.33	668.4
267.00	1,437.00	80.30	102.80	.....	1,620.10	524.7

ecap. sheet following.

e d	Gas revenue	Tar and coke revenue	Gross revenue	Net revenue
0	$533.78	$93.28	$627.06	$84.49
0	550.61	2.00	552.61	153.11
0	521.62	20.39	542.01	206.14
0	583.88	135.84	719.72	77.32
0	604.22	55.94	660.16	48.89
0	741.56	57.16	798.72	122.97
0	803.62	72.99	876.61	17.90
0	850.38	90.70	941.08	52.51
0	738.12	126.34	914.46	276.48
2	630.25	123.28	753.53	352.48
0	698.33	37.44	735.77	354.68
0*	728.09	48.85	776.94	149.84
3	688.73	211.69	900.42	140.23
5	638.84	114.68	753.52	112.55
1	703.40	128.00	831.40	163.42
7	727.25	62.59	790.44	195.73
2	583.58	52.05	635.63	487.46
2	300.36	73.07	373.43	687.33
3	738.61	24.40	763.01	706.25
4	864.18	46.62	910.80	466.55
7	1,217.02	54.15	1,271.17	348.93

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missioner Waltermire: Well, that is a reserve supply?
Witness: It is a fluctuating amount; for example, at noon, l say, everybody draws fast; the plant itself would not be able duce enough just during that time to supply them. Therefore older feeds them. And during the night, when not so much g used, the holder receives gas and thereby allows an accumu- ready to serve the customers for breakfast in the morning.
missioner Waltermire: Well, do you know whether or not the outing plant generally is in pretty good condition or not?
Witness: The interior of the plant itself is in fair condition; speaking now of the retorts and washers and those things; they fair condition.
missioner Waltermire: Are you familiar enough with the ess there to know what artificial gas is chiefly used for?
Witness: No, sir; I am not.
Martin: In answer to your question as to the number of con- rs, in 1917, when the property was taken over, there were 330. robably have 350 gas consumers in the city at the present time.

44] By Mr. Barrere:

What is the character of the gas you are producing at the pres- ime?
The quality of the gas at the present time is the best that can be uced with the present coal.
Well, I am not asking you that; I am asking you what it is?
I cannot give you a chemical analysis of the present gas.
You don't know whether it is good or bad?
I could not give you a chemical analysis of the present gas.
Well, as a general statement, could you say whether it was or bad?
No, sir; I would not say because I cannot make an analysis of the present time; I do not know; that would be for a chemical neer to determine, the quality of the gas at the present time.

d thereupon the schedules last above referred to are admitted in nce on behalf of The Ohio Utilities Company and are herewith itted and marked respectively Exhibits "A," "B" and "C."

Martin: That is all that we have to offer with regard to the gas rtment of our operations at Hillsboro, and if your Honors please, your permission, we will now go into the matter of the furnish- of electric energy in Hillsboro.

re follows Exhibit A to Hickson's Testimony, marked side folio page 45)

[fol. 46]

Exhibit B to Hickson's Testimony

Data from Hillsboro Gas Department of the Ohio Utilities Company, Hillsboro, Ohio

Period of operation	Gross gas revenue received	Gas operating expense listed in reports	Additional gas operating expense from return construction estimate	Net gas revenue received	Net gas revenue required	Gross gas revenue required	Additional gross gas revenue required	Per cent of increase required
Jan. 1, 1919, to—								
June 30, 1919	$3,900.28	$4,192.62	$766.98	$1,059.32	$3,900.00	$8,859.60	$4,959.32	127
July 1, 1919, to Dec. 31, 1919	4,998.39	6,061.46	766.98	1,830.05	4,211.03	11,039.47	6,041.08	121
Jan. 1, 1920, to June 30, 1920	4,284.84	6,071.56	766.98	2,553.70	4,259.58	11,098.12	6,813.28	159
Jan. 1, 1919, to June 30, 1920	13,183.51	16,325.64	2,300.94	5,443.07	12,370.61	30,997.19	17,813.68	135
July, 1920	763.01	1,469.26	127.83	834.08	709.93	2,307.02	1,544.01	202
August, 1920	910.80	1,377.33	127.83	594.36	709.93	2,215.09	1,304.29	143
Sept., 1920	1,271.17	1,620.10	127.83	476.76	709.93	2,457.86	1,186.69	93.2

$60,000 times .065 equals $3,900.00.
64,785 times .065 equals 4,211.03.
65,532 times .065 equals 4,259.58.

4,259.58 divided by 6 equals $709.93.

[fol. 47] EXHIBIT C TO HICKSON'S TESTIMONY

Data from Hillsboro Gas Department of the Ohio Utilities Company, Hillsboro, Ohio

Source of Additional Gas Operating Expense

Estimate 3, install new bench and retort beginning September 1, 1917	$1,084.25
Allowed to capitalization	.....
Returned to operating expense	1,084.25
Total charge, September 1, 1917, to August 31, 1920, covering 36 months	1,084.25
Expense per month equals 1,084.25÷36	30.12
Estimate 21, rebuilding gas plant beginning August 30, 1918	5,300.84
Allowed to capitalization	3,730.84
Returned to operating expense	1,570.00
Refilling gas bench finished June 18, 1920	775.00
Total charge, August 30, 1918, to August 31, 1920, covering 24 months	2,345.00
Expense per month equals 2,345.00÷24	97.71
Monthly expense due to Estimate 21, plus refilling	97.71
Monthly expense due to Estimate 3	30.12
Additional monthly expense	127.83
Addition 6 months expense	766.98

[fol. 48] PART OF EXHIBIT "A-1" TO HICKSON'S TESTIMONY

November 18, 1920.

Mr. L. G. White, Chief Engineer the Public Utilities Commission of Ohio, Columbus, Ohio.

DEAR SIR: I have investigated the above matter at Hillsboro and at the company office in Columbus. I will submit two reports, one for the Artificial Gas and one for the Electric Service.

Artificial Gas Rate

The company files its P. O. C. O. No. 3, Artificial Gas Rates, to become effective August 26, 1920, increasing the rate per 1000 cubic feet of gas from $1.35 to $2.00. The city protested the sched-

ule and the company elected to charge the new rate, $2.00 per 1000 cubic feet, filing satisfactory bond.

For the 12 months ending September 30, 1920, I find the actual operating expenses (not including plant replacements) were:

Production:		
Superintendence and labor at works	$3,369.20	
Fuel under retorts coal carbonized	6,978.70	
Miscel. supplies and expenses	587.39	
Repairs at work	718.62	
		$11,653.91
Distribution:		
Distribution labor	1.30	
Work on consumers' premises	5.48	
Repairs to maintenance and service	22.22	
Meter maintenance	16.30	
Miscel. distribution repairs	23.11	
		68.41
General:		
Salaries officers and miscel. ex		992.97
Total actual operating and small maintenance expenses		$12,715.29

[fol. 49]

Taxes

I find the taxes for the 12 months' period chargeable to the gas department were $963.00.

Plant Renewals or Replacements

During the past few years the company has renewed the retorts and benches, the scrubbers and purifier, etc. Part of these costs are chargeable to capital account and the balance should be charged against depreciation or contingent fund which is provided for in this cost of service analysis.

These renewal and replacement charges amounting to $755.98 for six months or $1,534.00 per year are outlined in detail in Company Exhibit "C,"

Amount for Figuring Rate of Return

The appraisal of the gas property as of March 1, 1917, was $60,000.00.

The net additions and betterments properly chargeable to capital account to July 1, 1920, amount to $5,532.00, which, added to the above $60,000.00, gives us $65,532.00 valuation on which to calculate the rate of return to which the company is entitled.

Depreciation or Contingent Fund

This fund should be considered in the cost of service analysis to provide funds for renewals and replacements of plant and equipment. This fund should be sufficient to pay for the retort and bench renewals occurring every few years and also to provide for replacements of the longer lived items such as scrubbers, purifiers, holder, mains, services, meters, buildings, etc.

In my opinion 5 per cent of the valuation amount is fair allowance for this fund.

[fol. 50] Cost of Service Past 12 Months

From the foregoing we have the following cost of service for the 12 months ending September 30, 1920.

Operating and minor maintenance expenses	$12,715.29
Taxes	963.60
8% return on $65,532.00	5,242.56
5% Depreciation or Contingent Fund on $65,532.00	3,276.60
Total	$22,198.05
Deduct for sale of coke and tar	890.42
Net cost of service	$21,307.63

Quantity of gas sold in 12 months' period, 6,145,000 cu. ft.

Rate necessary to produce above cost of service, $3.46 per 1,000 cu. ft.

New Gas Holder

When a new gas holder is built the capital account will be increased about $7,000.00 and about $3,500.00 will have to be charged to the Depreciation or Contingent Fund and pro-rated over a period of years.

The $7,000.00 additional capital account charge on 8% basis amounts to $560.00 per year, which would increase the above "Rate necessary to produce cost of service" by 9 cents.

The pro-rating over a period of years of the $3,500.00 charge is, in my opinion, provided for in the above depreciation allowance of $3,276.60 per year.

In considering the above cost of service per year I wish to call attention to conditions obtaining the past year which tend to make operating costs higher than they probably will be for the next year. [fol. 51] The gas holder has leaked during the entire past year and excessively the past few months, making it necessary to produce more gas than will be required after the new holder is installed.

The capacity of the present holder is not sufficient for the most economical manufacture of gas at Hillsboro. Uniform tempera-

tures are not maintained in the retorts, causing excessive wear of the benches and retorts.

The quality of coal has been very poor, requiring larger quantities to be used than probably will be required next year. The coke revenues production and quality should also increase with better grade of coal.

With better and uninterrupted service the number of gas consumers should be increased next year.

From my investigation I find that the rate of $2.00 per 1,000 cubic feet of artificial gas as filed in P. U. C. O. No. 3 schedule is not excessive.

Yours very truly, Thomas D. Pierce, Appraisal Engineer.
TDP/DDM.

(Entry rescinding order of suspension of Artificial Gas Rate Schedule P. U. C. O. No. 2. Given complete in journal entries of Public Utilities Commission, filed herewith. See page 18 of record.)

Mr. Martin: Now we have a similar schedule with reference to the electrical branch of the property which we will ask to have marked Exhibits "D" and "E."

And thereupon the schedules last referred to are marked, respectively, for identification herein, as Exhibits "D" and "E."

[fol. 52] J. J. Hickson, called on behalf of The Ohio Utilities Company, having been heretofore duly sworn, testified as follows:

Emamined by Mr. Martin:

Q. Now, Mr. Hickson, I wish to call your attention to a schedule regarding the electrical department of the Hillsboro division of The Ohio Utilities Company, and request that you make explanation of same to the Commission.

A. Well, beginning with January, 1919, we have listed here the fuel cost, the power station labor, the taxes, the item of other expenses, the total electric expenses, the electric revenue, and the difference between the last two items, net electric revenue.

It will be noted that during January, 1919, our fuel cost was $1,124.63, with a power station labor item of $360.81, with taxes $194.70, and other incidental expenses of $460.92, making a total electric enpense of $2,141.05. The electric revenue in this same month was $2,781.24, leaving a net electric revenue of $640.19. The same listing is followed down the sheet through the period of the successive months and we come to the later months, and to September, 1920, in which the proposed rate has been charged to the consumer, but in many cases not collected yet, and we have a fuel cost of $2,035.88, with a power station labor charge of $437.88, with taxes of $194.70, and other expenses incidental to the business of $937.54, making an electric expense of $3,606.00. During this month of September the revenue as charged should return $4,125.54 which should leave us a net revenue of $519.54.

[fol. 53] Q. Do the figures as given include any return in the way of interest on the investment and accumulation for depreciation or replacements in the future?

A. These figures do not contain any such item as depreciation or interest on the investment.

Q. Now, I will ask you to turn to the second sheet and explain to the Commission the grouping of revenues and expenses in periods of various months, as you have made them in the second sheet?

A. Beginning with January 1, 1919, and running through to June 30, 1920, we show on this second sheet, which you have before you, the gross electric revenue of $60,879.55; the electric expenses have totalled during the same 18 months operation $42,568.77. This has left us a net electric revenue received of $8,310.78. The next item in line is the net electric revenue required to take care of an 8% return on the investment and 5% depreciation, which the Commission allowed. To determine this figure of $26,780.00 which this property should have returned to us during the 18 months operation under consideration, the note in the lower left hand corner will be of assistance. For the period closing June 30, 1919, the valuation of $130,000.00 is used and is multiplied by 6½% for six months, or 13% for one year, but divided by two to get the six months' return, in which time it should have returned $8,450.00.

At the close of December, 1919, there had been put in on the electric work, in the way of new meters, new services and in new material like that, and there is absolutely no question about it being absolutely new, and to go toward capitalization, $7,000.00, which, added to the previous $130,000.00, gives us $137,000.00 as the investment upon [fol. 54] which the 13% per year, or 6½% per six months, is figured, which gives us $8,905.00 as the return that should have been made during that six months.

Going six months further, $8,000 00 more were invested in new meters, new services and the like, and it consequently gives us $145,000.00 as the plant value at that time, upon which, during that six months operation, namely, January 1, 1920, to June 30, 1920, $9,425.00 should have been made in order to take care of the property as the Commission allowed us. The total of these amounts would make up the $26,780.00 as listed above under "Net electric revenue required;" using this figure as the revenue—as the net electric revenue required, and adding it to the electric operating expenses, gives us a gross electric revenue required of $69,348.77.

In other words, that is the amount that we should have had on the current consumed in order to have made a return upon the property and taken care of the depreciation. However, we did not make that, but it would have taken, as additional gross electric revenue required over what we did receive, $18,469.22, or, during this 18 months operation, we should have had an additional 36.4% over the rates charged in order to have taken care of the property in the before-mentioned way.

Taking the next line, July, 1920, and going through, it will be noted that during July a very high coal cost was experienced, due to inability to get coal, and which jeopardized us at that time in order

to keep the plant going. But we were able to keep going and the plant, during that month, suffered a loss of $235.42. In other words, [fol. 55] during that month, and using the proportionate return allowed, pro-rated by the month, of $1,570.83, we should have had a 64.8% increase to have taken care of the plant.

Going on down we go to September, 1920, in which the proposed rates have been charged, and we find that the plant has made us $519.54, as against $1,570.83, which it should have made during that one month; or, using the note, "September revenues, shown above, are under the new rate (now contested) and show the necessity of a 25.5% increase over the present contested rate in order to pay the operating expenses, 8% interest on the plant value and 5% depreciation."

Q. So that in September the new rate has been tried out with that result?

A. Yes, sir.

Mr. Martin: I believe you may cross-examine.

Cross-examination.

By Mr. Barrere:

Q. Under "Other Expenses," what do they consist of, in a general way?

A. "Other Expenses" would take in certain distribution work in maintaining the service, certain miscellaneous labor that is at times necessary and cannot be classified under power station labor. You will notice we had this one column of "Power Station Labor" and that is at the plant alone, and it is necessary, therefore, to have under another column such work as line work that is absolutely necessary to take care of the lines in case of trouble, or transformers in case of trouble. All such work has to be classified under some heading other than Power Station Labor.

[fol. 56] Mr. Martin: That includes all office help, meter readers, collectors and all other expenses incurred down there excepting the power plant labor.

Q. Under "Other Expenses," what per cent of that amount is Columbus expenses?

A. Under this item, Mr. Niles will take care of that.

By Mr. Barrere:

Q. When this service demand was put in there it applied to all power users at once?

A. I believe that for some time, through an error in understanding at the local office, the rate was supposed to be in effect, but, upon investigation, the evidence showed that the rate had not been in effect during that whole time, through an error, and the patrons were in a way receiving a wonderful help at our expense.

Q. Well, now, how did it happen that the service demand would be placed upon some of the consumers and not on all?

A. I do not think that was the intention at all.

Q. I say how did it happen?

A. Well, it was in the misunderstanding of a rule, and it was not applied at all, as I understand it, until later found out, and then the rate as published was put in effect, which should have been done at the start, but which during all that time the power users of Hillsboro were getting a wonderful benefit from it. It was due to a misunderstanding at the local office.

Mr. Gross: Well, were we all supposed to have a fixed ratio of increase, that is, pay the same, relatively?

The Witness: All were supposed to be billed for service under the rules and regulations of the schedule as published. Now, no two cus-[fol. 57] tomers using widely differing classes of service, such as you have enumerated and which, we regret to say, that buzz-saw proposition is a very, very hard thing to justly take care of, but which we have no other way to take care of, but to make a rule for all and let all be under that rule.

Mr. Gross: Let one pay the penalties for the other?

The Witness: They were getting the advantage, and we have no recourse.

Redirect examination.

By Mr. Martin:

Q. I just want to clear up one matter, Mr. Hickson; the inquiry was made this forenoon as to why a customer, using current continuously along for hour after hour, would have a higher maximum demand that one who momentarily came on with a very large power consumption and after that his demand would drop low again. Now I wish you would explain to the Commission the features of the maximum demand meter and how the measurements are made with reference to time?

A. Well, gentlemen of the Commission, a maximum demand meter is an auxiliary instrument used in connection with a kilowatt hour meter for recording the maximum rate at which that kilowatt hour meter records during a definite time period, mechanically taken as of 30 minutes duration. An installation that might have, as was referred to this morning, a cut-off saw or some saw of that nature, that might momentarily come on for a few moments for a considerable demand for power, but, because a few moments later the demand falling to a very much lower amount, and because a maximum [fol. 58] demand meter is made to take care of what is called a 30 minute demand, the maximum demand meter does not get a chance to have its record run high because of the low time period entering into the rather spasmodic demand for power. In this way then a customer might jump for a few moments' duration, might jump on for a large power demand for a few minutes' duration and not be under as high a maximum demand reading as an adjoining customer whose load would be continuous but at a slightly smaller, or a smaller continuous demand. It is the time element that brings that about,

and custom has established this 30 minute time duration. Therefore the meter manufacturers make these meters on this 30 minute demand basis.

Q. It is a favorable measurement of the current to the customer when the customer is not required to pay for a maximum demand, unless that maximum demand shall be continuous, for a period of 30 minutes, is it not?

A. Yes, sir.

Q. In other words, if he has a maximum demand for 20 or 25 minutes he does not pay for that maximum demand, but does pay for the next lowest maximum demand which extends over a period of 30 minutes. That is true, is it not?

A. Yes, sir.

Mr. Martin: I believe that closes our examination with this witness.

Commissioner Waltermire: Just a spasmodic user is the hardest man to serve, isn't he?

The Witness: In some ways that is true and in some ways possibly [fol. 59] the commercial plant is not being given a just return on that customer; but custom has not as yet penalized that customer to that extent. He is still allowed to work under what is called a 30 minute demand, which is used commercially practically the country over. So we are doing on that basis exactly what is the custom the country over practically.

Recross-examination.

By Mr. Barrere:

Q. In connection with this fuel cost, Mr. Hickson, the fuel cost that is charged here, is that for fuel that was purchased during the month of September or for fuel consumed?

A. Let me have that sheet, please?

Q. I am speaking of the electric alone now.

A. You have a sheet that is entitled "Data from the Hillsboro Electrical Department"?

Q. Yes, The Ohio Utilities Company.

A. Referring to the September fuel cost, that is not the cost of all the fuel purchased in that month. It is the cost of the fuel used in that month.

Q. That is, it is simply——

A. It happens that during that month we had a little more coal come in and it is in storage and it will be used from time to time. The coal is put in the bin and is used out. We only charge here what is used.

Q. What was actually consumed?

A. Yes, sir.

Q. Now, does that constitute all of the fuel that was burned at the plant?

A. All the fuel that was burned at the plant; no, sir.

Q. How do you arrive at the amount of fuel consumed during any particular month?

[fol. 60] A. The amount of fuel consumed during any particular month is kept track of on the long basis of—I mean for a long time period, or, stating it this way, coal comes in and is charged to that account. Coal is used out and it is credited to that account. Now we know when we have used up all of the coal at a certain time, when we begin to have coal put into another pile, and we used it all out of one side, we know when we come to having used all of the coal we bought up to a certain time. Therefore we can arrive, by keeping track of how much we take out of that bin, the number of days and the amount we take out, we can tell how much should be charged to each separate month all the way along, because that coal account—when we put coal in the bin and later take coal out of the bin and then separate and begin another pile and then have used up all of that coal, we can tell when we have used up all we purchased, and we make an actual physical inventory, once a year, to determine how this is coming out, and then we can check our figures as to the coal used proportionately through all the months.

Q. You say that was not all the coal that was burned at the plant; what other fuel was burned?

A. As for any other fuel burned at the plant, there is a division which Mr. Niles will tell about.

Q. That is, you know nothing more about the fuel that is burned at the plant then; that is, you don't know in regard to the fuel burned at the plant?

A. I know some of the things about the fuel burned at the plant, but as to the division, I have nothing to do with that.

Q. Well, how can you then testify in this instance that there was [fol. 61] this amount of fuel burned for the purpose of producing electrical current?

A. We have the records month by month and year by year and we have the vouchers for the coal purchased which is charged to that account and we have the credits for coal taken out of that account, or taken out of that bin and consumed, and it is both on a monthly and a yearly basis, when we take a physical inventory to determine the amount of coal.

Q. What is this division you speak of?

A. You asked me whether or not that was all the coal.

Q. Yes, and you said there was a division made.

A. Well, there is a certain amount charged to another item which Mr. Niles will tell about. That is not my depart——

Q. You don't know anything about that?

A. No, sir; I do not.

Q. Then you don't know—whatever division is made—whether that is a fair and equitable division?

A. I believe it is.

Q. Well, you don't know, though?

A. No, sir; I do not know that.

Q. Then you really cannot testify in regard to the fuel cost at the plant?

A. I am telling you that we know from the amount——

Q. I say you cannot testify in regard to it?

A. I know from figuring the total bills, the total amount of coal on hand, and——

Q. But you say you don't know anything about the division?

A. Yes, sir.

Q. And if you don't know anything about the division how can [fol. 62] you testify in regard to the fuel cost at the plant?

A. I know from the total amount used over a long period of time.

Q. But what I am asking you, you say there is a division made which you know nothing about?

A. That is not in my department. Mr. Niles will tell you about the diversion.

Q. You take as between August and September, there is a difference of approximately $600.00 in the cost of fuel; on the basis of the difference in the cost of coal per ton, to produce the same amount of current, I believe it figures out something like there should be a difference of $249.00. How do you account for a difference of practically $400.00 additional that you have charged for fuel?

A. It will be noted that September, 1920, fuel cost a higher rate per ton than the coal purchased in the preceding months.

Q. I know, but figuring it upon the basis, using the same amount of coal each month, there would be a difference in cost of $249.00?

A. There is a radical difference at times in the amount of coal used per month and yet with the same amount of current consumed, because during the last few months we have had to use various kinds of coal. We have not been able to purchase all our coal from one place and coal varies widely, both in its inherent b. t. u.'s and in its burning characteristics. Therefore a wide variance is sometimes found in the best plans, in the number of tons of coal used pro-rated to the number of kilowatts generated.

Q. And you think it isn't anything out of the way that there would be a difference in two months right together of $400.00 in the cost [fol. 63] of fuel to produce the same amount of current?

A. Not under the conditions under which we have been forced to work lately, with different coal supplies. West Virgina coal, for example, is very different from Ohio coal, and some kinds of Ohio coal, are as different as day from night, when it comes to burning under boilers.

By Mr. Barrere:

Q. Now, coming down to that, Mr. Hickson, how many pounds of coal does it require in your plant to produce a kilowatt of electricity?

A. That is a question I cannot answer from here; I haven't the record of the kilowatt hours generated.

Q. Is there any one here connected with your company who can answer that question?

A. It do not believe it is computed at the present time, sir.

Mr. Martin: I think that is in our report.

The Witness: I think we can give it to you when Mr. Niles goes on the stand.

Mr. Barrere: Well, we will take it up with Mr. Niles when he gets on the stand.

Q. You do not know, Mr. Hickson, in regard to that?

A. No, sir, I do not know. I have not computed it and I could not answer.

Q. Have you, as an electrical engineer, any knowledge of what is ordinarily required to produce a kilowatt of electricity, how many pounds of coal?

A. That will depend greatly upon the equipment used in generating that current.

Q. Well, take it in a well-equipped plant.

A. For example, we might take a plant the size of our Hillsboro [fol. 64] plant and with the present equipment, and it might take a great deal more coal, because of less investment, and not so expensive machinery used, as in another plant of a great deal larger size where the equipment is three or four times as great.

Q. But in a plant like the Hillsboro plant, what would you say would be——

A. It would only be a pure estimate. I should think it would take in the neighborhood of not less than 12 pounds down there.

Q. Not less than 12 pounds of coal?

A. In that sized plant.

Q. That is your judgment as an electrical engineer?

A. In that sized plant and under the conditions under which we work and the conditions of that value in that plant; yes, sir.

Q. There is one other question; the amount of coal—the fuel consumed is for the calendar month of September?

A. Yes, sir.

Q. It is from September 1st to October 1st?

A. It is from September 1st to and to include September 30th.

Q. The current charged for is from what dates?

A. Approximately the same dates as near as they can be read.

Q. But I am asking you if you know from what dates it is.

A. Approximately the same dates; that is the only way we can keep our records, is to keep the records approximately over the same period of time. It is necessary to read the meters a day or two ahead sometimes in one month in order to have the bills ready for the close of that month, and the same thing holds true with the next [fol. 65] month, so that it is not always possible to go right straight off and say, "We have used so much just to this point," and know to the pound where we get off. We have to read the meters first and get the bills ready.

Q. Isn't there such a thing as a long current month and a short current month; doesn't that happen in your business?

A. Not necessarily; no, sir.

Q. Well, I say, doesn't it happen; I didn't say, "does it necessarily happen," but doesn't it happen in the Hillsboro plant?

A. The only time I can see where that would happen would be the month of February.

Q. Oh, I am not talking about that; I am talking about a short current month, due to the fact that the meter is read earlier, say for September, is read earlier in August and later in September, and making the October month a long month and the September month a short one?

A. No, sir.

Q. Doesn't that happen in the Hillsboro plant?

A. No, sir, not to my knowledge.

Q. Do you know anything about it?

A. No, sir—I know something about it, yes. The meters must be read in time to allow the bills to be made for the month. Now, as for the number of days it takes to read the meters in that particular plant, the number of days necessary to figure the bills and have them ready, I could not answer that question. I know from experience that it usually takes four or five days on most properties to handle that work. Here in Columbus it is often longer than that between the time——

Q. Well, I am simply saying that I was under the impression that there were long months at times and short months at times.

A. Not to my knowledge.

[fol. 66] And also JOHN A. NILES, called as a witness on behalf of The Ohio Utilities Company, being first duly sworn, testified as follows:

Examined by Mr. Martin:

Q. Please state your name and business, Mr. Niles.

A. John A. Niles, 515 West Fourth avenue, Columbus, Ohio; auditor of the company.

Q. Auditor of The Ohio Utilities Company?

A. Yes, sir.

Q. Now, Mr. Niles, I wish you would state whether or not the books of account of the various divisions of The Ohio Utilities Company are kept under your supervision and direction?

A. All of the records and all of the accounting statements and all of the preparation—all the necessary preparation for all the reports are directly under my supervision, and they all reflect the exact operation covering each company for each month, as to revenues receivable and earned and as to the actual operating expenses, such as the fuel consumed, all labor and all other charges incidental to the operation of the various plants. And, in the case of Hillsboro, we have two separate departments; that is, two separate operating statements, one covering the electric light and power department and the other covering the gas department.

Q. I will ask you, Mr. Niles, if you have seen the figures and schedules made up by Mr. Hickson and submitted as exhibits in

his testimony, and, if so, have you compared same with the figures, as listed on the books and records of The Ohio Utilities Com-
[fol. 67] pany?

A. Yes, sir, all of the schedules prepared by Mr. Hickson have been taken from the operating statements as prepared for the company directly from the books, covering all coal operations and all pay-rolls and all charges incidental to the operation of the various departments.

Q. And you, in connection with Mr. Hickson, have checked same for accuracy, have you?

A. We have checked all those schedules.

Q. Now, the inquiry has been made, Mr. Niles, with reference to the number of pounds of coal to produce a kilowatt hour in the plant at Hillsboro. Have you——

A. Well, during the month of March it approximated 8 pounds; during the month of May, 9.2 pounds; July, 10 pounds, and August, 12 pounds.

Mr. Barrere: September you haven't?

The Witness: September—I haven't made that calculation because the report is just partially completed. That is, I have the exhibit there, or the payrolls, and all the charges entering into the fuel cost, but that report is not ready yet in this regular form, but it will of course be ready within a few days. It generally takes about a week——

Chairman Marshall: Would you like to have that information?

Mr. Barrere: I think I would, yes, sir.

The Witness: It is possible that we have the coal report there, I am not sure.

Mr. Martin: The reports are not made up as yet.

Commissioner Waltermire: I would suggest as soon as he gets
[fol. 68] the data that he give Mr. Barrere a copy of the report and furnish a copy to the Commission.

Mr. Martin: Yes, we will do that. Our September business has not gone on the books. We have all the vouchers and all that, but a part of it was only received this morning and they have not been entered on the books. We cannot enter it until it comes from Hillsboro, but we can furnish that to the Commission and opposing counsel in the next two or three days.

Mr. Barrere: The reason we made that injury is, as I get the figures, the kilowatt production must have jumped about two to four pounds in September over what it had been before.

The Witness: I think perhaps, Mr. Hickson, you can get that off that statement there; if you will let me see that statement, I will give it to you. You will note from that fuel report that there is approximately 333 tons used during the month of September; those are the approximate figures. $6.00 into 2,000, or a little over 2,000, that gives 333 tons, multiplied by 2,000 pounds gives 666,666, and the generation for the month was 50,000, so it will be 50 into 666, which is practically 13 pounds per kilowatt hour,—between 12 and 13 pounds. In my reading of the statement just a minute ago I

gave you months of March, May and July, and while I stated August, it should have been September; when I read for the month of August as 12, that should have been stated for the month of September. It is between 12 and 13 pounds for the month of September. In the month of July it was 10 pounds.

[fol. 69] By Mr. Smith:

Q. Mr. Niles, how long have you been engaged as an employee of public utilities?

A. Since 1916.

Q. 1916?

A. Yes, sir.

Q. During that time you worked for awhile at the Circleville office, while it was a steam generating plant?

A. Yes, sir.

Q. And can you state to the Commission, from your experience in keeping books and auditing the accounts as to whether or not all coals in tonnage produce the same result in current?

A. No, there is a vast difference, or quite a difference as to the coal used. At times when we are able to get good West Virginia coal, why, we could make current for several pounds less than on Ohio coal, and at times when we have had to burn nothing but slack it will take often more than two or three pounds; there is quite a variance as to the amount used, according to the coal.

Q. You mean two or three pounds or tons?

A. No, two or three pounds to the kilowatt hour produced.

Q. And now does it vary as to Ohio coal?

A. It is hard to state. There is really no comparison between a good West Virginia coal and an Ohio coal under our equipment. It has a whole lot to do with it.

Q. Now, Mr. Niles, can you give the Commission the approximate values of the gas and electric properties, taking as a basis the value fixed by the Commission and the additions thereto.

A. The amount originally allowed for the Light and Gas Companies, at the time they were taken over by the company, was $183,-[fol. 70] 000.00. That has been augmented from time to time. On December 31st—and the figures are stated in the report—the original amount allowed was $183,000.00; that was back in November, 1917.

Commissioner Waltermire: Is that the joint properties?

The Witness: Yes, sir, the light and power and the gas. There was approximately at that time $125,000.00 on the light and about $60,000.00 on the gas.

Commissioner Waltermire: And was that the value fixed by the Commission?

The Witness: That was the value as fixed by the Commission at the time we took over the property.

Commissioner Waltermire: The present or the reproduction value?

Mr. Martin: That was the present value. Now there has been added——

The Witness: There has been added since that time—construction estimates—that is, completed construction work in total; that is, covering both the Light and Power Company, we have spent over $32,000.00; that is up to August 31st.

By Mr. Martin:

Q. And that has been checked by the Commission and how much allowed as capital account and how much charged back into operating expenses?

A. Out of that I should say that our last accounting with the Commission, there was about $8,000.00 of that thrown back into—that is, to be amortized over future years as an expense.

Q. I will ask you as to the amount of valuation placed on the [fol. 71] property by the Tax Commission of Ohio?

A. The certificate of valuation and distribution by the Tax Commission as of July 12th, covering both properties, is $177,000.00; that is on the tangible property. Of course, in the original valuation there was some intangible values allowed, but the amount on the tangible property is $177,000.00, and that is the basis for the taxes at Hillsboro. Our last taxes amounted to approximately $1,500.00 for the half taxes.

Q. We are then approximately paying $3,000.00 a year?

A. We are paying approximately $3,000.00 a year taxes for the property at Hillsboro.

Cross-examination.

By Mr. Barrere:

Q. Now, in connection with this amount which was—which you say had been—that has been put into the company for improvements, etc., from what source was that money secured?

A. Well, of course, partially, when the company was on the earning side at all, the money could be used from that source, but a greater part has been from outside financing; that is, outside of any earnings made from the Hillsboro division.

Q. How much of it came from the Hillsboro division?

A. Well, that I cannot just exactly state.

Q. Now, coming back to this coal division proposition, which Mr. Hickson said you could explain; now, I would like to understand what that coal division proposition is.

A. Well, I believe you spoke—or rather asked the question if all of the fuel on the report covered all of the fuel burned in the station? [fol. 72] Q. Yes?

A. No, that is not true, that is, we have each month—or, rather, that portion—during the summer months 30% of the fuel is originally charged to the light and power department; we credit that account with 30%, which is charged to the Hillsboro Ice and Coal Company, but the amount as shown on Mr. Hickson's statements is the original charge, less than 30%.

Q. In that connection, what, if any, profits are being made by the

Hillsboro Ice and Coal Company? Do you know the net profits, if any, of The Hillsboro Ice and Coal Company?

A. I cannot state that valuation because that is a different company altogether. We merely charge the Hillsboro Ice and Coal Company just the same as we would render any other consumer for the amount of a proportionate share.

Q. How do you arrive at their proportionate share?

A. Well that has been gone into as scientifically as possible, to try and determine just the amount of steam consumed, or, rather, condensed, for the making of the ice, and our engineers have prepared that proportionate share as the charge.

Q. Are you the auditor also of the Hillsboro Ice and Coal Company?

A. Yes, sir.

Q. But you do not know what, if any, profits that company is making?

A. Well, the company has made profits, I know that.

Q. It has been a money making business all the time?

A. As an ice company, yes, sir.

Q. It has always been a money making business? (No reply).

[fol. 73] By Mr. Barrere:

Q. Now, Mr. Niles, coming back again to this fuel cost; have you any explanation of why there has been this continual increase in the number of pounds of coal required to produce a kilowatt of electricity?

A. Nothing more than the quality of the coal used. Heretofore, or rather previous to the months that I have reported, we have been able—in fact, we always have purchased West Virginia coal, but certain restrictions made it necessary that we get other coal, which necessitated that we get Ohio fuel, and that is what we have been burning for the last six months, with just a little of the other coal mixed in.

Q. Now you think it is simply due to the fact that you have continually during the past six months got poorer and poorer coal all the time?

A. The quality of the coal had a whole lot to do with the pounds per kilowatt hour. We have not been getting the quality of coal that we did previously, and while we were getting West Virginia coal we had a less consumption per kilowatt hour, but the Ohio coal ran that up.

Q. You say though you have been using Ohio coal for about six months?

A. Yes, sir.

Q. And still this fuel cost jumped from August to September this amount?

A. Well, we have mixed—we started to use the Ohio coal, I presume about six months ago; that is, part of it; previous to that time the greater part was West Virginia coal.

Q. Now the power station labor, I see also jumped for the month of September about $80.00 over—

A. Well, of course that is really a small item, when you come to [fol. 74] consider that amount of work that might be done around a station.

Q. Well, it is better than a 20% increase.

A. Over what?

Q. Over what it had been the month before.

A. $80.00.

Q. Yes; that is better than a 20% increase.

A. Well, of course our payrolls will reflect that.

Q. Now also you notice that under "Other Expenses" there is an increase, September over August of $137.00.

A. Well, our vouchers—there is an exhibit there that will explain all of that. We have the vouchers here for the September operation.

Q. And I notice also that taking the increased rate there was a smaller amount of current sold during the month of September than in practically any other month?

A. Well, it is possible that there was or has been—there was during the month some curtailment in the current consumption by the private consumers; I presume there would be as the prices go up.

Q. It is just simply a coincidence that on the first month that you increased the cost of current to the consumer that all expenses for the running of the plant increased and the amount of current used decreased? That is just simply a coincidence?

A. Why, the plant costs—or the operations of the month are all reflected in that exhibit there.

Q. Well, I say is it just purely a coincidence that in the first month that there would be an increase in the cost to the consumer, that the expenses for the conducting of the plant along every line [fol. 75] would increase, with apparently no explanation for it, and that the amount of current consumed would decrease?

A. Well, the operation—the total operation has been on the increase for some months and certain charges and certain necessary repairs have all been made during the month.

Q. September though is not an unusual month?

A. Nothing at all unusual about it. There is a variance between the months as to the operation; some necessary repair that is made will cause a larger percentage of operation for that month. That is not determined or fixed really as to what each month's operation shall be.

Q. Then September—the net profit shown in September under the increased rate is not a fair basis to show what the net profit to the company will be under the increased rate?

A. Why, it is the first actual operating—that is, under the first actual operating conditions and the first revenue that we have received; while we have anticipated at the time of making the rate receiving a certain amount of gross increase, it was purely a hypothetical figure until it was realized on this first billing, and we have realized now even with this increased rate that we are approximately $25,000.00 short.

Q. But what I am asking is this; you consider that it would be fair to say that what September shows will show for the year?

A. Subsequent to September?

Q. It is fair to say that will be what the showing of your profits will be?

A. No; we cannot determine exactly as to what the coal prices will be.

Q. Well, I mean leaving your coal prices out of the consideration; [fol. 76] just labor and other operating expense, it is a fair proposition?

A. Labor will probably stay close to those charges made during September.

Q. You have increased the labor; that is, the wages, in September?

A. No, I did not state that. But as a basis for power station labor or the total charges for payrolls, that that will probably remain the same. It is possible that that will be increased.

Q. But you think that this 20% increase is not simply a temporary matter, but that it will stay; there had been a 20% increase?

A. Do you mean from the month of August 31st.

Q. That is for August over July, there was a 20% increase in labor, and from August over September there was a 20% increase in labor; now do you think that 40% increase, or that increase, will remain or is there any probability that it will drop back down?

A. If you use as a basis power station labor, I would say that in all probability it would remain about the same figure.

Q. I am talking about the power station labor.

A. Yes, sir.

Q. Under that head?

A. It is possible during that month that part of the men who are employed on the lines or some place else, that they did work at the power station; that the portion of the payroll which would have been charged otherwise to other miscellaneous expense will be charged back to the power station in the distribution during that month.

Q. I notice back in May, 1919, that your power side of the labor ran even higher than it does in September, 1920, but for the first [fol. 77] month—it ran $454.00 in May and for June it dropped down to $256.00. Now, I was simply wondering as to whether this September month might not be an unusual month and it would drop back the same as it did between May and June, 1919.

A. Well, that would depend largely upon the distribution of the labor itself; that is, men who are ordinarily employed over the whole system, part of the month—it is possible for the first 15 days they are working around the power station, doing work in the power station, and part of their labor for the balance of the month, they are possibly out on the distributing system, on the lines or some place else.

Q. But in both of these months, that is, back in May, 1919, other expenses were charged in the months immediately following, and as here shown the other expenses are larger than they were in the month immediately preceding?

A. Well——

Q. So it cannot be, unless you had extra men employed just temporarily, it would look to me like——

A. Well, other expenses do not necessarily limit the expense to labor alone. In other expenses is included necessary materials used on the lines on the system.

Q. You have not had any more men employed during September, any more labor employed during September, than ordinarily?

A. I could not answer that, perhaps Mrs. Bennett could answer that.

Mr. S. L. Bennett: In August and September our boys took their vacation, ten days, and we had to hire extra labor.

[fol. 78] Mr. Barrere: That is, the labor expense is a little bit larger than it would ordinarily be?

Mrs. Bennett: It was larger in August and September, although it varies a lot. It is according to what we have to do. If our boys have outside work we take them out of one place and put them in another, and it is pretty hard for——

Mr. Barrere: But this expense is due to the fact that the regular employees were taking their vacation?

Mrs. Bennett: Partly, yes.

Mr. Barrere: Were taking their vacation and were being paid their regular wages?

Mrs. Bennett: Yes.

Mr. Barrere: And that you were employing in their places to do their work other people, which would mean that it was really, so far as labor at the power station is concerned, larger than normal?

Mrs. Bennett: Yes.

Mr. Martin: We give our men ten days with full pay every year, and they take it sometimes at one time of the year and sometimes at another time.

Mrs. Bennett: Sometimes we are able to shift our men and sometimes we are not able to; especially if we have work on the street, as we have in the last two months, we use all the men we can without hiring extra labor.

Mr. Barrere: That is all.

Commissioner Waltermire: I notice in the column "Total Electric Expense" that it varies from month to month over a long period and seems to be somewhere between $200.00 and $400.00, generally [fol. 79] $300.00 possibly, whereas between August last and September there was a variation of about $900.00, now, can you recall any of the specific items which caused this large variation between those two months?

The Witness: Between August and September; the item of coal alone is approximately $600.00. You will note under fuel cost, the fuel cost for August was $1,402.00 and for September $2,035.00, which approximates $574.00 for the month. That would explain part of that $900.00.

Commissioner Waltermire: Well, now, take the month of July as compared with September, and coal was then $8.20 per ton, and still you have nearly $600.00 total expense over July?

The Witness: Well, there is very little difference there in coal cost.

Commissioner Waltermire: Yes, I observe that, and that is why I asked the question.

Mr. Martin: The difference comes in other expenses.

Mr. Barrere: The coal cost $2.42 more per ton in July than it did in September and still the amount of coal consumed was $100.00 less approximately.

Mr. Martin: It depends upon the quality of the coal.

The Witness: The difference in coal consumed in July and September was two pounds per kilowatt hour.

Commissioner Waltermire: Well now, if, after the close of the navigation season, you are able to get a good quality of West Virginia coal, there is no reason why you should not, after that time, reduce the cost per kilowatt hour, is there?

[fol. 80] The Witness: If it would be possible to get good West Virginia coal, I should say yes, but as to that possibility and as to the price——

Commissioner Waltermire: Oh, I am aware that there is a possibility.

Mr. Martin: We are still short 25% of making enough to pay anything on the investment—pay a return on the investment, so we have figured, allowing and forecasting somewhat that that condition will take place.

By Mr. Barrere:

Q. Just one more question, Mr. Niles, are the conditions in Hillsboro any different from those conditions in most towns in the state of Ohio, between 4,000 and 6,000 inhabitants, as to the reason for cost per kilowatt hour for electricity; that is, that the cost of production should be practically the same in Hillsboro as in other towns of from 4,000 to 6,000?

A. Well, I cannot answer that question.

Q. Do you know of any conditions which exist in Hillsboro which would make it more expensive to produce a kilowatt hour of electricity than any other town of from 4,000 to 6,000?

A. I do not.

Mr. Barrere: That is all now.

Mr. Martin: We will formally introduce in evidence Exhibits "D" and "E."

And thereupon the statements referred to are admitted in evidence on behalf of The Ohio Utilities Company and are herewith submitted and marked respectively, Exhibits "D" and "E."

Mr. Martin: We also introduce in evidence the Certificate from the Tax Commission, which is the only certificate we have from them, and I do not know as it is necessary to introduce it as it was read into the record.

[fol. 81]

EXHIBIT D TO NILES' TESTIMONY

Data from Hillsboro Electric Department of the Ohio Utilities Company, Hillsboro, Ohio

Period of operation	Fuel cost per ton	Fuel cost	Power station labor	Total fuel and labor expense	Taxes	Other expenses	Total electric expenses	Electric revenue	Net electric revenue
Jan., 1919.....	$4.20	$1,124.62	$360.81	$1,485.43	$194.70	$460.92	$2,141.05	$2,781.24	$640.19
Feb., 1919.....	4.20	1,109.50	366.30	1,475.80	194.70	649.52	2,320.02	2,723.37	403.35
Mar., 1919.....	3.95	1,099.73	415.65	1,515.38	194.70	415.17	2,125.25	2,449.68	324.43
April, 1919.....	3.65	1,021.12	349.37	1,370.49	194.70	686.32	2,251.51	2,253.58	2.07
May, 1919.....	3.95	1,143.38	454.53	1,597.91	194.70	511.16	2,303.77	2,175.44	128.33
June, 1919.....	4.15	1,073.96	256.90	1,330.86	194.70	350.92	1,876.48	2,122.59	246.11
July, 1919.....	4.05	955.14	246.88	1,202.02	194.70	436.26	1,832.98	2,052.23	219.25
Aug., 1919.....	4.05	1,128.70	313.15	1,441.85	194.70	578.22	2,214.77	2,264.65	49.88
Sept., 1919.....	4.05	1,135.11	282.15	1,417.26	194.70	547.09	2,159.05	2,492.76	333.71
Oct. 1919.....	4.05	1,399.01	342.20	1,741.21	194.70	584.63	2,520.54	2,777.51	256.97
Nov. 1919.....	3.37	1,405.01	449.10	1,854.11	194.70	760.11	2,808.92	3,394.41	585.49
Dec., 1919.....	3.81	1,438.72	463.50	1,902.22	194.70	703.74	2,800.66	3,972.18	1,171.52
Jan. 1920.....	4.20	1,364.02	314.10	1,678.12	194.70	545.23	2,418.05	3,335.01	1,416.96
Feb., 1920.....	4.50	1,238.47	265.80	1,504.27	194.70	753.73	2,452.70	3,425.39	972.69
Mar., 1920.....	4.35	1,341.69	287.94	1,629.63	194.70	499.85	2,324.18	3,352.02	1,027.84
April, 1920.....	5.00	1,364.55	407.49	1,772.04	194.70	745.80	2,712.54	3,024.02	311.48
May, 1920.....	6.50	1,493.10	264.00	1,757.10	194.70	639.43	2,591.23	2,760.05	168.82
June, 1920.....	5.10	1,344.14	359.18	1,703.32	194.70	817.05	2,715.07	3,023.42	308.35
July, 1920.....	8.20	1,990.52	309.73	2,300.25	194.70	532.67	3,027.62	2,792.20	235.42
Aug., 1920.....	4.95	1,402.76	358.26	1,761.02	194.70	800.14	2,755.86	3,393.21	637.35
Sept., 1920.....	5.78	2,035.88	437.88	2,473.76	194.70	937.54	3,606.00	4,125.54	519.54

[fol. 82] EXHIBIT E TO NILES' TESTIMONY

Data from Hillsboro Electric Department of the Ohio Utilities Company, Hillsboro, Ohio

Comparative period	Gross electric revenue received	Electric operating expense	Net electric revenue received	Net electric revenue required	Gross electric revenue required	Additional gross electric revenue required	Per cent of increase required
Jan. 1, 1919, to June 30, 1920	$50,879.55	$42,568.77	$8,310.78	$26,780.00	$69,348.77	$18,469.22	36.4
July, 1920	2,792.20	3,027.62	235.42	1,570.83	4,598.45	1,806.25	64.8
July and Aug., 1920	6,185.41	5,783.48	401.93	3,141.66	8,925.14	2,739.73	44.4
September, 1920	4,125.54	3,606.00	519.54	1,570.83	5,176.83	1,051.29	25.5

NOTE.—September revenues, shown above, are under the new rate (now contested), and show the necessity of a 25.5% increase over the present contested rate in order to pay operating expenses, 8% interest on plant value and 5% depreciation.

$130,000 times .065 equals	$8,450.00
137,000 times .065 equals	8,905.00
145,000 times .065 equals	9,425.00
	$26,780.00
$9,425.00 divided by 6 equals	$1,570.83

[fol. 83] And also CHARLES P. WAHN, called as a witness on behalf of the Ohio Utilities Company, being first duly sworn, testified as follows:

Examined by Mr. Martin:

Q. State your name, residence and occupation, Mr. Wahn.

A. Charles P. Wahn, Circleville, Ohio; new business manager for The Ohio Utilities Company.

Q. I wish you would state to the Commission your former connections with the electrical business, the Westinghouse and other companies.

A. I was with the Westinghouse Company from 1899 to 1914 continuously, and from then on with the Frank Ridlon Company of Boston, in charge of their Railway Company until May, 1917, and from then on I have been with this company.

Q. Now, Mr. Wahn, the question was raised this morning with reference to the maximum demand charges at Hillsboro. I wish you would acquaint the Commission with the facts in reference to why these charges were *not* made and when they were made and the occasion of making them.

A. I have forgotten the exact date on which the schedule was filed which provided for a maximum demand basis as a method of charge. But some time, some months afterwards, I went down there in the course of other business, and found that the maximum demand charges were not in effect, with but one or two exceptions, where we had demand meters. I think the Gross-Feible was one of them, because there was some controversy earlier on account of their demand having been estimated rather than recorded by the [fol. 84] meter. I reported the matter to Mr. Martin and he immediately ordered me to go back again and figure out the matter of the customers' motors and where the meters were installed and where no demand charges were made, and I did that on the back of each of the meter slips, on which the records are taken and kept, and I figured out the charge based upon the kilowatt demand indicated by the horse-power, according to the manufacturer's rating. In that way we determined the charge upon each customer, not as a current charge but as a demand charge, according to the capacity connected. The following month I went around with the meter reader from Hillsboro and explained to each of the power users, to whom this was new, just what the maximum demand was, how much it was, and why it was, and I did not know that we had any—we did not understand at that time, although some made complaint——

Q. Now, did you have anything to do with the installation of the meter on the Gross-Feible maximum demand?

A. No; I knew of it, but I did not have anything to do with placing it there.

Q. Now, this delay in connection with the maximum demand from some of the other customers where it was estimated, was it wholly unknown until you discovered it?

A. Absolutely.

Cross-examination.

By Mr. Barrere:

Q. Mr. Wahn, since your connection with The Ohio Utilities Company, have there been a number of improvements made to increase the efficiency of the plant?

A. At that Hillsboro plant?

Q. Yes.

A. Yes, sir.

[fol. 85] And also CHARLES T. GILMORE, called as a witness on behalf of The Ohio Utilities Company, being first duly sworn, testified as follows:

Examined by Mr. Martin.

Q. State your name and residence and occupation, Mr. Gilmore.

A. Charles T. Gilmore, Circleville; engineer of The Ohio Utilities Company and business manager of the Circleville Division.

Q. I wish to ask you, Mr. Gilmore, if you made an appraisal of the property of The Ohio Utilities Company at Hillsboro, Ohio, at the time the same was taken over by the company?

A. Yes, sir, I did. An appraisal was made as of March 1, 1917. I was directly in charge of this work and made this appraisal.

Q. Now, what was the final amount fixed by the engineer of the Commission at that time as the reproduction value of the property?

A. They fixed $183,628.59, fixed by them after carefully checking my valuation.

Q. And how was it divided as between the gas and electric?

A. Divided at that time $101,200 tangible value on light and power, and $51,219.00 tangible value on the gas property, and an intangible value of $17,496.00 covering both properties, and a developing business charge of $13,712.00, making up the total of $183,628.00. That was returned by the Commission after a careful check of the physical property.

Q. Mr. Gilmore, you had charge of the Hillsboro division—supervision of it for a time?

A. Yes, sir.

Q. Do you now recall the division of the charges for the Ice [fol. 86] Company and the electric department?

A. Why, vaguely, yes. They are in the neighborhood, as stated by Mr. Niles, if I remember right, of 30% or something like that; I cannot recall; it was five years ago.

Q. Well, at the time these charges were divided, were they based on a careful investigation as to costs of operation after this investigation?

A. Yes, sir, they were. The amount of steam used was determined and the other factors that went into it and that was the figures determined upon.

Cross-examination.

By Mr. Barrere:

Q. What was the condition of the gas plant at the time it was purchased by your company?

A. Fair condition; a new bench was installed at that time.

Q. The gas plant was in good condition?

A. It was fair.

Q. By that do you mean the plant at which the gas is made, or do you include in that the mains, etc.?

A. I include the general plant as a gas plant. The condition was fair, the bench was new.

Q. The portion of the plant then—and I am referring specifically to that—what condition was the plant in where the gas was made; that is, that part of the plant?

A. Fair condition.

Q. If the service has been poor following the time when you people took charge of it, it has been due to what cause?

A. Well, if anything, to a general depreciation of such things as the gas holder and things that were apparently in fair condition then but depreciated and went to pieces.

[fol. 87] Q. You simply say they were in apparently fair condition?

A. They were apparently in fair condition as to the physical condition, to the naked eye.

Q. The plant then, if it is in bad shape now, has simply been allowed to run down?

A. No, sir.

Q. Why is it in this bad shape?

A. Depreciation during a period of years that the plant has been in operation—depreciation of the plant.

Q. Just ordinary depreciation?

A. Yes.

Q. Have you people given, at any time since you have owned the gas plant in Hillsboro, good gas service?

A. We were giving at the time—and I can only speak when I was there and in charge of the plant,—the gas service I considered was all right then.

Q. I don't remember just when that was, but if it was, it was certainly an exception, that is all.

And also Mrs. S. L. BENNETT, called as a witness on behalf of The Ohio Utilities Company, being first duly sworn, testified as follows:

Examined by Mr. Martin:

Q. Your name is Mrs. S. L. Bennett?

A. Yes, sir.

Q. Residence, Hillsboro, Ohio?

A. Yes, sir.

Q. And what official position do you hold with reference to The Ohio Utilities Company at Hillsboro?

A. District manager.

Q. Mrs. Bennett, for what period of time have you been manager of the plant at Hillsboro, both before and since the Ohio Utilities Company owned it?

A. Well, since the Ohio Company has owned it I have had that [fol. 88] title and had that position. When Mr. Beecher owned the plant I practically did the work about six months of the year and ran the plant, and the rest of the time he was there.

Q. How long since you first was connected with the property of the gas and electric company at Hillsboro?

A. I cannot give the actual number of years but I imagine about 15 or 16 years, at least 14 or 15 years.

Q. And during that time practically in the same work that you are now doing for the company?

A. Yes, absolutely.

Q. Now, Mrs. Bennett, the question has been asked with reference to the division of expenses between the electric department and the Ice Company at Hillsboro; can you give us the proportionate division of these expenses?

A. We charge—when the ice plant is running 24 hours we charge 30%. When we run it 12 hours we charge 15%.

Q. Of what?

A. 15% of the coal used and the power station labor for the steam production. We charge $100.00 a month rent.

Q. For how many months?

A. For 12 months. We charge a small per cent of the chief engineer's wages to the ice plant.

Q. How much in dollars?

A. $10.00 a month, and the actual wages of the boys—the time the boys use to ice the cars is charged to the ice plant; any small expense——

Q. That is, you keep a separate payroll?

A. The ice company have their own separate payroll in The Ohio Utilities Company. We even get the per cent of steam production. [fol. 89] It varies with the number of days that we run the ice plant in the week.

Q. Then in the item of power station labor charged as against the electric, no part of the ice company's labor is charged therein?

A. Absolutely, separate.

Q. And the fuel cost charged to the electric department is 70% or more of the fuel cost, and does not include the cost apportioned to the ice company?

A. No, sir.

Q. Now, inquiry has been made with reference to the gas plant, the service and the changes that have been made in the gas plant since The Ohio Utilities Company took over the property. Are you familiar with the conditions at the gas plant in Hillsboro?

A. Absolutely.

Q. Can you say to the Commission whether or not now any additional benches of retorts have been put in since The Ohio Utilities mpany have owned it?
A. With the exception of the buildings and the holder, the gas nt has absolutely been renewed. We have new scrubbers and w washers; we have two new benches that have been installed; one ch has been repaired recently and two new retorts put in, and a ch of fives put in, and with the exception of the holder there is thing about the gas holder—with the exception of the holder and e building and the coal house, but what has been renewed. Not ly that, but we have put in a lot of improvements in the way of l tracks, and a coal wagon and a lot of improvements over and ve the condition it was in when it was taken over from Mr. echer. We junked everything that was in the place after he left.
l. 90] Q. What can you say with reference to the capacity of the ubbers and purifiers and as to the character of work which they as compared with the old installation?
A. We have the same man at the head of our gas plant now that s been there for years. I think he is very efficient—very. Other p that we have are men—we cannot change help at the gas plant ause it takes too long to teach a man and we have been very fortue in keeping our old men, and we have more help now than we e had in years.
Q. Well, I asked you with reference to the capacity of the scrubs and purifiers that have been put in?
A. Well, the capacity of the scrubbers and purifiers is as much as as ever been and they are supposed to be—to make a great deal ter quality of gas.
Q. They are entirely new?
A. They are entirely new.
Q. And the building that contains them, is that new or old?
A. It is old, but it has been repaired and we have remodelled it a and fixed it up.
Q. I have reference to the scrubbers and purifiers. A. Well, that lding is absolutely new.
Q. But that that contains the retorts——
A. Is old.
Q. But it has been repaired?
A. It had a concrete floor put in and a lot of improvements.
Q. It has been renewed and repaired?
A. Yes, sir.
Q. Now inquiry has been made with reference to the mains; what racter of mains have they in Hillsboro, with reference to being iron or wrought iron?
A. Well, Mr. Martin, that is something that I cannot just exactly I remember at the time, a few years ago, when Mr. Beecher
l. 91] owned the plant, that there were a great many places in n we dug up and investigated the conditions of the mains and nd them in excellent condition. Now the size I could not just you.
Q. What was the result of that investigation made at the time you

renewed the services in the streets, where the new paving is being put down?

A. With the exception of the holes that the street shovel made in our mains, they were in excellent condition. We only found one place that was bad and it was repaired.

Q. Can you give us now some idea as to the cost of the renewal of the services in those streets that were paved by the city?

A. I could not, Mr. Martin. It was vouchered and sent in as labor and material; it was vouchered and sent in as the bills came in and charged to new service.

Q. Now, what is the condition of the gas holder?

A. The condition of the gas holder is bad.

Q. And what can you say with reference to the absolute renewal of it, if gas service is to be continued down there?

A. It will have to be renewed. There isn't any use in trying to go over the winter with that gas tank.

Q. What can you say about your efforts to make repairs?

A. Well, if we had not made repairs the town would have been out of gas months and months ago. We put a new concrete top on the holder and as it would form cracks from contraction, we would keep the cracks filled up, and the other day we had to take it all off and renew it, had to put a covering over this old covering in order to have any gas at all.

[fol. 92] Q. Your gas service for a time was interrupated on account of the bench of retorts going bad?

A. I think about ten days, and it was interrupted on account of the steam shovel.

Q. Well, now, do you recall the ordering of a bench of retorts from the Russell Engineering Company in St. Louis in December of last year?

A. I think it was even before that; I think it was sooner in the year than that; if I remember right it was in September, but I am not sure.

Q. In September, 1919?

A. I think so, and we got delivery when we shut down that ten days.

Q. What date was that?

A. I don't just remember.

Q. Well, was it during the year 1920?

A. Yes, 1920; we were closed down about ten days; we really expected to be closed down longer—but while we were putting in the bench of 5's our own boys put in the two retorts in the bench of 4's, repaired those, and we started up considerably sooner than we expected to.

Q. You do not recall now what month that was that those retorts were delivered?

A. When they were delivered—they were delivered—no, I don't just recall the month, but I know it was in the hot season, possibly June or July; I don't just remember.

Q. Almost a year after you ordered them?

A. Well, it was pretty close to it.

Q. Now, then, you had some correspondence with the Russell Engineering Company?

A. Yes, sir.

Q. Can you give the Commission the reason that was assigned with [fol. 93] reference to why they could not get these out?

A. Well, it was at the time—the war times—and they were not having—they did not have any men, they claimed, and after they got the retorts in shape to ship them, they could not get any cars; if you remember, they held them over for quite a long time waiting for cars to ship them in.

Q. And this all interfered with your service?

A. Yes, sir.

Cross-examination.

By Mr. Barrere:

Q. Mrs. Bennett, you said you were with Mr. Beecher for quite awhile before you went with the Ohio Utilities Company or before the Ohio Utilities Company purchased the plant?

A. Yes, sir.

Q. Now, in connection with the gas department, you speak of having bought new benches; now, how often is a purchase of that description made?

A. Well, Mr. Barrere, it is pretty hard to tell; sometimes we will get a bench—they are supposed to last from two to three years, but the bench of four's that we repaired did not last nine months and we reinstalled the bench of four's before Mr. Beecher went out, if I remember right, and the two top retorts gave out before we got the bench of five's installed.

Q. Then the benches bought last—that is put in this year was the first new benches that have been put in since the Ohio Utilities Company purchased the plant?

A. Well, I think the Ohio Utilities Company purchased the plant just about at the time the bench of four's, I can't just remember, Mr. Barrere, but the bench of four's was installed—was in there [fol. 94] when Mr. Beecher sold the plant to the Ohio Utilities Company.

Q. You think it was in, and according to your best recollection these are the first benches that have been put in since the purchase of the plant by the Ohio Utilities Company?

A. No, I do not think so—now, wait a minute, I will tell you how that happened; the bench of four's were renewed by the Ohio Utilities Company just after they purchased the plant. Mr. Beecher bought the bench of four's and they did not last very long and when this company took the gas plant over they had to renew this bench of four's because they did not run—they had not lived their life.

Q. And you say a bench ordinarily lasts how long?

A. Well, you can't tell anything about the life of those benches, they are supposed to last possibly a couple of years; but this bench

of four's that Mr. Beecher bought, if I remember right, only lasted about nine months.

Q. The Ohio Utilities Company purchased or took over this company at what time?

A. Well, I can't tell you.

Mr. Niles: November, 1917.

Q. And still, until September, 1919, although it was hard to tell how long a bench will last there had been no new benches ordered?

A. No.

Q. And sometimes a bench may only last nine months?

A. That is under extraordinary conditions.

Q. You said that practically within the three years during which the plant has been owned by the Ohio Utilities Company that the plant, as purchased, has practically been junked?

A. Yes, all except the holder.

[fol. 95] Q. What has been the general nature of the gas service furnished to the people of Hillsboro during the period of time that The Ohio Utilities Company has owned the plant?

A. Sometimes very good; when we could get coal we furnished gas and furnished as good gas as we ever had. The coal proposition has been terrible at the gas plant.

Q. But as a whole, what would you say as to the nature of the service rendered?

A. Not good.

Q. What has been the nature of the service rendered in the last six months?

A. The last six months—well, the service in the last six months is not good.

Q. Wouldn't you go a little further and say it was bad?

A. I might. If we had good coal we might have been able to give better service.

Q. Now, going back to the light proposition, when are the meters read?

A. Well, we aim to read them practically every four weeks; we possibly start on the twentieth of each month.

Q. You start reading on the twentieth of each month?

A. Yes, sir.

Q. Now, is there any variance in the time when you start reading due to any local conditions that may exist?

A. Absolutely not; that is at my orders; the meters are read—the time for reading meters.

Q. And the meters are always read the same time each month?

A. Practically, yes, sir. They were not in August; they were read after the twenty-sixth of August.

Q. They were read after the twenty-sixth of August?

A. Yes, sir.

[fol. 96] Q. And they were read at what time in September?

A. We started on—we were a little late on account of a misunderstanding as to when the rate would go into effect and we were a few days late—September, are you asking about?

Q. Yes.

A. We were a few days late, possibly four days; we possibly started on the twenty-third or twenty-fourth.

Q. Then what period of time was covered in the reading of the meters for the bills which were rendered October 1st; that is between what dates?

A. Well, they were between the twenty-sixth of August and possibly the twenty-third or twenty-fourth of September; that is when we started.

Q. It would be a three or four days shorter month than ordinarily?

A. Yes, sir.

Q. And might have been a bit more than that, that is just simply according to your best recollection it is three or four days and might have run a few days more than that?

A. Yes, sir.

Q. Mrs. Bennett, what was estimated, at the time Mr. Beecher owned the plant, as the number of pounds of coal required to produce a kilowatt of electricity?

A. Mr. Beecher never kept any records, Mr. Barrere.

Q. That is, if he had any records, he did not give them to you; that is you know of no record he kept?

A. Mr. Beecher did not keep any record.

Redirect examination.

By Mr. Martin:

Q. The reason you delayed reading your meters in August was that the new rate was not effective until August 26th?

A. Yes, sir.

[fol. 97] Q. And under instructions you did not read the meters and threw into the next month at a higher rate, the current consumed before that date?

A. No, we really lost money, Mr. Martin.

Q. Now, Mrs. Bennett, I wish to call your attention to another matter which I think you overlooked; was there not a new bench of retorts put in or the bench filled under Mr. Gilmore's supervision after The Ohio Utilities Company took charge of it?

A. Yes, the bench of four's.

Q. And that is a matter you overlooked; that was not installed by Mr. Beecher, was it?

A. No, he installed a bench of four's but they did not hold up, and Mr. Gilmore installed a bench of four's and then the two top retorts of the bench of four's gave out and we installed the bench of five's and installed two new retorts in the bench of four's.

Q. Then since The Ohio Utilities Company have owned the plant they have installed a bench of four's, a bench of five's, and two new retorts in the top of the bench of four's?

A. Yes, sir.

Recross-examination.

By Mr. Barrere:

Q. Just one other question; in regard to the gas, the condition in recent months has really been such that you could not tell at any time whether you would or would not have gas?

A. No, sir.

Q. You had no idea at any time during the day whether you would have it or whether you would not?

A. Not from one day to the next, due to the holder.

Q. And most of the gas in Hillsboro is used for cooking, is it not?

A. Absolutely all.

[fol. 98] Q. If a woman started to get a meal—any meal, she didn't know whether she would have enough gas to get through?

A. Sometimes, yes.

Redirect examination.

By Mr. Martin:

Q. Now, I wish to ask you with reference to the gas coal; how has it been with reference to the purchase of gas coal?

A. We have absolutely been unable to buy it, Mr. Martin. Our fields from which we generally buy our gas coal and from which we were getting the best results have closed operations for months; the West Virginia gas coal fields have been absolutely closed down and we have been unable to get it. The last car of coal that came in we got from Kentucky and when it came in we really didn't know whether we had bought coal or dirt, it was in such awful shape that we hesitated to unload it, but we either had to unload it or close down the gas plant and in order to keep up the poor gas service we have had to run our bench of four's and our bench of five's which is something that never happened in the history of the company before, and we held the heats with Ohio coal in one retort in order to get the little gas we could get out of it, which was practically nothing, but we had to have that coke to hold the heats in the other bench in order to get any gas at all out of this coal.

Q. And what did you have to pay for that coal?

A. I paid $10.25 at the mines and the freight was $2.38.

Q. And that is the cost and expense that the company has been put to in order to serve the people of Hillsboro with gas, is it?

A. In order to serve them with what we have to furnish.

[fol. 99] Q. And they are objecting to paying for the service rendered under those extreme costs?

A. Yes, sir.

Q. They object to you when they come to pay their bills, do they?

A. Yes, sir; seriously.

Q. What did you pay for the car of gas coal that you got just before this last one?

A. $9.75, I think.

Q. What was the freight on that?
A. Well, it was, I think—I don't remember the freight; it was from Kentucky and there was an assignment charge on it because they had to divert the car and I don't remember the freight rate, but it was a $1.70, I expect.
Q. $1.70?
A. Yes, sir.
Q. That was before the 40 per cent increase in freight?
A. Yes, sir.

Recross-examination.

By Mr. Barrere:

Q. What is the quality of the gas that the people do get?
A. It is not good.
Q. Low, so far as heat units are concerned?
A. I imagine so, yes, but when it comes to the purification it is good that way.
Q. I mean so far as the heat units are concerned?
A. Well, it is not very—it is not what we would get out of good coal.
Q. And now following the closing down of the plant, when it was opened up during that period, had not the pipes got pretty well full of air?
A. We did not have much complaint.
Q. When the people turned on the gas after it had been out say for ten days, didn't the air have to come out of the gas pipes before [fol. 100] the gas coal could come through?
A. Possibly.
Q. Would that air run the meters?
A. Not enough of a per cent to be noticable; we tried it.

Mr. Barrere: That is all.
Mr. Martin: That is all.
Commissioner Waltermire: Is there anything further, Mr. Martin?
Mr. Martin: That is all.

And thereupon The Ohio Utilities Company rested.

Commissioner Waltermire: Have you any testimony on your side, Mr. Barrere?
Mr. Barrere: If your Honors please, in the matter of the gas service I have witnesses here whom I believe will do nothing much more than simply put in corroborative evidence in regard to what Mrs. Bennett has testified here and giving particular inconveniences which they have suffered themselves and of the poor service which they have had to endure during all of this time. Now I believe it would simply be a waste of time of the Commission to put that testimony in. I am simply inquiring whether or not you would like to have any testimony along that line.
Commissioner Waltermire: It seems to me to be conceded by the company that the service is bad and that it cannot be improved

unless they can get better coal and unless they can build a new holder, so I really do not see that it is necessary.

[fol. 101] L. A. STANLEY, called on behalf of the protestants, being first duly sworn, testified as follows:

Examined by Mr. Barrere:

Q. State your name, residence and business.

A. L. A. Stanley, Hillsboro, Ohio; automobile business.

Q. Mr. Stanley, what was your occupation before you went into the automobile business?

A. I was in the telephone business before I went into the automobile business.

Q. In what capacity?

A. As a wire chief of the Hillsboro Telephone Company.

Q. What electrical experience have you had?

A. Well, I had about all the electrical experience that a man could well get in a common battery telephone plant and for several years I was associated with Mr. Beecher and during most of that time up until I went into the automobile business I was studying electrical engineering.

Q. You expected to follow that business?

A. Yes, sir.

Q. You have made an examination of the conditions which the service demand charge in Hillsboro was installed and also in regard to this increased demand charge, that is the application for an increased rate?

A. Yes, I have gone into that pretty thoroughly.

Q. Will you state to the Commission what your investigation disclosed?

A. Well, now, due to the present schedule that we have there is a wide variation in the net current costs of the different installations caused by this fixed maximum demand charge. I have here before me now a list of some of the power users in Hillsboro made from [fol. 102] these power users' bills either in the month of June or July—just a short list that I have here that will show a wide variation in the net current cost and the injustice to a number of the power users which this maximum demand charge places upon them. We have quite a number of power users in Hillsboro who have a pretty fair load at times and some of them a pretty heavy load. It is absolutely necessary for them to have power to pull their load. These meters are not in continuous operation. Now, I have just a short list of them and I will read it, it will show better than anything I can tell you. Fairley and Turner have a three horse motor. Their maximum demand charge for the month of June or July, I do not know which it was now—these are all in June or July—was $3.00. They consumed 30 K. W. hours at a net cost of 14 cents.

The Hillsboro Overall Company have a ten horse motor. Now there is an installation that went into operation and is operated about nine or nine and one-half hours a day at approximately a full load. The maximum demand charge was estimated on that ten horse motor at $7.96. They consumed 815 K. W. hours at a net cost of 4.9 cents.

C. C. Walker has a 15 horse motor; this 15 horse motor is in a grain elevator and it is used when they unload a wagon full of grain; they pick the wagon up and dump this grain into a chute and they use it for cleaning the grain. They don't use it very often but when they do use it they have to have the 15 horse power approximately. Their maximum demand charge was $15.00; they consumed 64 K. W. hours of current at a net cost of 35.1 cents per K. W. hour.

[fol. 103] J. D. Rhoades has a five horse motor. That is in an elevator winding machine. Their maximum demand charge was $5.05. They consumed 40 K. W. hours at a net cost of 18.8 cents.

The Hillsboro Gazette Company, that is a newspaper establishment, have a connected load of about 5¾ horse power; their maximum demand was $5.44; they consumed 131 K. W. hours at a cost of 8.1 cents.

Now, the Hillsboro Dispatch has a connected load of 3¾ horse; the maximum demand charge was $3.93; they consumed 586 K. W. hours at a net cost of 4.6 cents. Now there is a very small installation, they don't consume very much current and they have a very good rate for a small installation, 4.6 cents.

The Murphy Benham Hardware Company have a ten horse motor on an elevator winding machine with a maximum demand charge of $10.06, consuming 22 K. W. hours at a cost of 68.4 cents per K. W. hours. Now, there is a case where they happen to have a tenhorse motor installed, where as a matter of fact a smaller motor would do their work, a three horse motor would do their work—a smaller motor would do the work with their belts. A three horse motor would furnish all the power that their belts would be able to transmit in the condition they are in and yet they pay a maximum demand charge of $10.06.

Q. Who owns the motor?

A. They own the motor and the building.

Stanley Brothers Garage 16 horse power connected load; maximum demand charge $10.95; 235 K. W. hours' consumption, 8.6 cents.

[fol. 104] The McKeehan-Hiestand Grocery Company; they have a ten horse mortor elevator winding machine. Their maximum demand charge is $3.00. They consume 50 K. W. hours of electricity at a net cost of 10 cents; however, I found out since that their maximum demand charge was a mistake through a wrong listing of their motor. There are two installations that are identical, same make of motor and same size, and it costs one man 68.4 cents and the other man it costs ten cents and the one that it costs 68.4 cents consumed the less current.

The Hillsboro Buick Company have a four horse connected load and a maximum demand of $4.02; consumed 57 K. W. at a net cost of 11 cents.

Commissioner Waltermire: How many more of those have you?

The Witness: I have two more installations below ten horse power.

Commissioner Waltermire: Well, I was going to suggest that you had in enough to illustrate your point.

The Witness: Well, here is another one or two that I want to bring out and I will let the rest go; here is a typical case.

Leslie West Battery Company, they are charged a straight 7½ rate and they use from 600 to 800 K. W. hours per month and it is a continuous 24 hour load, a non-inductive load.

Now, we come to installations which have a maximum demand meter installed. The Model City Mills have a 35 horse power motor, their maximum demand charge was $40.50; consumed 718 K. W. hours at a net cost of 9.1 cents.

[fol. 105] Whistler's Feed Mill, their maximum demand charge was $30.00; consumed 540 K. W. hours at a cost of 9.5 cents. I do not know the size of his motor. They have 60 horse power of connected load.

The Hillsboro Auto Company have a connected load of 30 horse; their maximum demand charge was $6.00; consumed 160 K. W. hours at 13.1 cents.

The Gross-Feibel Company have a connected load of 103½ horse power; their maximum demand charge was $150.00. They consumed 9,170 K. W. hours at a net cost of 3.8 cents.

Whistler's Veneer Mill have a 50 horse power motor with a maximum charge of $22.50. They consumed 333 K. W. hours at a net cost of $3.63 per K. W. hour.

Now a number of the users in Hillsboro have come to me and put their proposition up to me and wanted to know if I was able to figure any way that they could reduct their current costs. In almost every instance where the installations are less than 20 horse power, or in other words, where the maximum demand charge is estimated there are ways in which their current costs can be reduced to some extent but all of those methods are going to cost them money. They will have to invest more money to buy the same amount of current at a less rate which will not reduce the operating cost of The Ohio Utilities Company a penny. Yet some of these users have no recourse except to spend additional money or do away with the electric power entirely. While Schedule H, under which these rates are effective does not so provide, Mr. Wahn of The Ohio Utilities Company advised that if any consumer, who [fol. 106] is under the 20 horse power installation, so desired he could install at his own cost a maximum demand meter and that his maximum demand charge would be based on the reading of that maximum demand meter. Now a maximum demand meter would cost somewhere in the neighborhood of $40.00 or $60.00 and it seems to me that it would be a useless expense to saddle on to those small users to keep from paying an exorbitant rate. Now for illustration we will take the case of C. C. Walker with his 15 horse

power connected load, who is forced to pay a maximum demand charge of $15.00, the character of his work is such that a maximum demand meter would show zero demand or approximately zero.

Commissioner Waltermire: His demand is now estimated?

The Witness: His demand is now estimated; yes, sir. Schedule H provides that all motor installations of 20 horse power and over shall be—the maximum demand shall be based on the reading of maximum demand meter installed by The Ohio Utilities Company, and all under 20 horse, that the maximum demand shall be estimated from the manufacturer's rate on the name plates of the motors and the character of the service to which the motors are put.

Mr. Martin: I think it is hardly necessary to go into this matter. The gentleman probably does not understand that these percentages are percentages that have been worked out by the Columbus Railway, Power & Light Company, and in Cincinnati and Cleveland and all other companies and submitted to Mr. White, the engineer of [fol. 107] the Commission, and approved by him and we have simply copied them from the percentages and the rules and regulations as approved by the Commission for more than a year—yes. I guess for more than two years, and it has become a settled condition that exists on all power rates. Now, I do not know whether it is sought to have the Commission reverse itself or not, but I would hardly think that it would on a proposition of this kind.

The Witness: Well, now, as a matter of fact we approve the point of view of the Ohio Utilities Company, and we don't want them to sell something down there that they can't make money at, but these charges are surely enough to cause the Commission to realize that we are operating under a schedule that is not just to all our power users.

Commissioner Waltermire: Your criticism is that the estimated demand is too great?

The Witness: Yes, in some cases.

Commissioner Waltermire: Do you know whether or not these items are estimated according to the almost universal rule of estimating payments?

The Witness: There is no question about that—about their estimates and all that, but what we object to is having to pay this maximum demand charge which will put the net cost of the current up to such a high figure, when there is a way around it, simply by the customer investing a little bit more money but not decreasing the amount of current he will consume nor decreasing the cost of production to the Ohio Utilities Company. Here is an illustration of the in- [fol. 108] justice of this maximum demand charge in comparing two installations: The Gross-Feible Company and the Whistler Veneer Company; The Gross-Feible Company have a number of motors, I don't know how many, probably eight or ten. Their load is approximately constant through the day. They consume over nine thousand kilowatt hours of electricity in a month. It costs them 3.8 cents per kilowatt hour. The Whistler Veneer Mill have a 50 horse power installation. The character of the work that

that motor has to do is such that a maximum demand meter cannot catch their maximum demand; a maximum demand meter does not show their maximum demand. A maximum demand meter showed a maximum demand of 15 K. W. when there are times that they will pull at least 40 horse—probably 50. I would not consider it improbable at all that they would pull 60 horse power, because at times they will stall their motor, or come as close to stalling it as they can without stalling it. The sawyer see that the motor is slowing up and he releases his pressure against the saw and lets the motor gather speed again. Now they are paying a maximum demand on 15 K. W., where their maximum demand is greatly beyond that, and that brings the net cost of their current down to 3.63 cents and they only consumed about one-twenty-fifth of the current that Gross-Feible consumed. Yet they have a lower rate. The Gross-Feible load is a much more desirable load from a central power station point of view because they have not the wide fluctuation in the current. These are things that I merely wanted to bring to the Commission's attention so that you will know exactly [fol. 109] what has taken place down there. Now here is another instance where this maximum demand charge works a hardship, and that is in the case of The Murphy-Benham Hardware Store with its elevator.

Mr. Martin: Well, I think it is hardly worth while to go into that. There is a special schedule for elevator motors and it has been in all our schedules and is in the schedules of all of the electric light companies. It is a demand for service that is recognized as a different class of service and these schedules have been approved by the Commission over and over again and by Mr. White. Now why should we take up the time of the Commission entering into a discussion as to whether or not—and by a layman—as to whether or not this is a proper charge in a rate schedule?

The Witness: Why, I am going to show by your own schedule that this man can decrease his cost.

Mr. Martin: Well, that is his business.

The Witness: Well, I am showing the injustice of your schedule.

Commissioner Waltermire: Well, how can he reduce his cost?

The Witness: All right. Schedule H provides that if a man has a 20 horse power installation or over, that they will install a maximum demand meter free of charge and base his maximum demand on a reading of the meter. Murphy Benham can throw out their ten horse motor, put in a twenty horse motor and the Ohio Utilities Company will have to put in a mixinum demand meter, and the maximum demand meter will show zero, and under Schedule H Murphy-Benham will pay the minimum current charge [fol. 110] of 50 cents per horse power hour of connected load per month, costing him $10.00 to operate his twenty horse power motor on an elevator whereas now it costs him about fifteen.

Commissioner Waltermire: What business is he engaged in?

The Witness: He is in the hardware business, they have a hardware store that is on three floors.

Commissioner Waltermire: Well, I thought it was an elevator is the reason I asked the question.

The Witness: It is an elevator—it is an elevator; it is running between the three floors of this hardware store.

Commissioner Waltermire: Mr. Martin says there is a special schedule for elevators and that is the universal custom and that if that were true he would not be entitled to come under Schedule H, would he?

Mr. Martin: We would not connect up to him at all if he attempted to defraud us in that way. We play fair and we want our customers to play fair.

Mr. Barrere: If he is using zero, aren't you attempting to defraud him by charging him a connected load; that is, a service demand of about ten times what he uses?

Mr. Martin: No, sir, the schedule provides for elevator motors, all sizes, 90 per cent of the rating, for all sizes regardless of the size of them, whether large or small; all sizes are 90 per cent of their rating. He could not install a demand meter there.

Commissioner Waltermire: That is because of the peculiar character of the service?

[fol. 111] Mr. Martin: Because of the peculiar character of the service. It is only used instantaneously and not for a thirty minute period. A demand meter only registers a thirty minute period, and he could continuously use off of us, just like a man taking gasoline out of a tank; if he takes out for ten minutes you will charge him for it, but he can come around every fifteen minutes and take out for five minutes until he empties the tank and he would not have to pay for it. This schedule is our protection on this character of service, because the demand meter is made by the trade and measures only a thirty minute interval, so all sizes of motor used on elevators are 90 per cent of their rating.

Mr. Barrere: You can cross-examine him, Mr. Martin.

Cross-examination.

By Mr. Martin:

Q. You say you are engaged in what business?

A. In the automobile business.

Q. In the automobile business?

A. Yes, sir.

Q. Have you ever taken a course in electrical engineering?

A. Correspondence course only.

Q. You have never devoted any of your time or attention to the electrical or lighting end of electrical engineering?

A. Oh, yes, in connection with our automobile business.

Q. Oh, I see. Now, you say you were with Mr. Beecher, but that was just as an associate; you did not work under him as an electrical engineer, did you?

A. Well, only at the time when they first inaugurated their twenty-[fol. 112] four hour service. I worked for him then—or rather

I worked for myself; that is, I was not on a salary, I was paid a commission.

Q. Mr. Beecher did not have a single demand meter on his property, did he, when he sold it?

A. Oh, no.

Q. And your experience with demand meters is limited simply to what you may see of them in Hillsboro?

A. Yes, sir.

Q. Now, then, have you studied the various schedules and rules and regulations that have been approved by the chief engineer of the Commission and been promulgated from time to time by the Commission as the rules of service?

A. No.

Q. By electric light companies to their customers?

A. I never was interested in anything of that kind.

Q. So you know nothing about the nature of these rules and regulations do you?

A. No.

Q. Now, then, is it not a fact that an elevator motor that is used simply in hoisting up and down a passenger car or a freight car would periodically, only be used for a few minutes, that is, while the car is traveling from floor to floor?

A. That is all.

Q. And a demand meter that only registered in thirty minute periods would not register that character of service, would it, because it would not require thirty minutes to move from one floor to another?

A. That is right.

Q. Isn't that a fact?

A. Certainly.

Q. So that it would be impracticable to put a demand meter on that kind of a customer?

A. Well, it would be impracticable from your point of view sure. [fol. 113] Q. Well, if you expected the customer to pay for the service that he was receiving there would be no way of measuring that service by the present constructed demand meter which requires a thirty minute interval to register?

A. No, sir.

Q. So that customer would receive his service without paying anything for it, wouldn't he?

A. Well, he is paying several times what his service is worth now.

Q. Oh, he is paying several times what his service is worth now; how do you know that to be a fact?

A. Why, because he is paying a whole lot more than the current costs.

Q. Do you know how much it is worth to him to have his elevator moved from one floor to the other at times when he so desires and to transfer his stock of goods from floor to floor as the necessity therefor demands?

Mr. Barrere: I object.

Mr. Martin: I am just testing this witness as to his knowledge. He has testified here as an expert.

By Mr. Martin:

Q. These figures you have given the Commission are based simply in the installation without reference to the value of the service to the customer; is that not true?

A. Why, absolutely.

Q. And you do not pretend to be an electrical expert or know the cost to the company of the ready to serve position that the company must be in to its various customers?

A. Regardless of what I pretend to be, I can prove every statement that I made.

Q. Do you know what it costs the company to be ready to serve a customer with a thirty horse power motor in the way of loss on [fol. 114] its transformers, meters and other installation that is necessary before service can be rendered to that customer?

A. I could not tell you without going into some cost figures.

Q. So that in your testimony as to making comparisons between different customers, it is simply bare figures without reference to what they cost, what the cost is for each class of service as rendered?

A. No; you are a little beside the point. Some of these illustrations that I made, one, two or possibly three, the customers could throw the meter out entirely and you could not decrease your transformer capacity a particle. You would have to maintain it because the rest of the users would require the capacity of those transformers. As a matter of fact an elevator motor, since you lay so much stress on that, requires but very little transformer capacity where it is operated in a short travel, like it would be with a maximum travel of three floors, because it is only operating on the three floors something in the neighborhood of seventy to eighty seconds.

Q. Well, in order to take care of a few seconds then, you would say that it would not be necessary to have transformers of a capacity equal to the draw or pull on the current at that time?

A. Oh, you misunderstand me. It is not necessary for you to increase the capacity of your transformers which you already have, because the capacity of those transformers are required for the other motor installations on the line. On the other hand, if the elevator motor was going to operate at a continuous load, then you would have to increase your transformer capacity.

[fol. 115] Q. Well, do you not know it to be a fact that transformers are built for an overload of 25 per cent and in event of the installation of a set of transformers where they are drawing approximately the maximum demand on those transformers and you then add from 50 to 100 per cent of elevator motors that are operated you say for a few minutes, that that would be sufficient to burn out or destroy the coils in the transformers?

A. No, sir, it would not.

Q. An overload of 100 per cent even for a short time?

A. An overload of 100 per cent?

Q. Yes, that is my question.

A. You said 50 or 100, if I am mistaken. Any transformer will stand—the manufacturers' rating on a transformer is based on a momentary overload of 50 per cent and an overload of one hour of 25 per cent.

Q. But beyond that it is not safe to go and keep your transformer in working condition?

A. Not if the transformer was heavily loaded.

Q. So that these costs are costs that should be apportioned to the customer regardless of the small period of time that he uses it, and for the reason that he expects service whenever a necessity arises?

A. Yes, sir,—well, I will tell you now—I was judging how that thing would work out more by the installation which you have down there, more than anything else. I know of one instance where you have two 5 kilowatt transformers divided up into three phase and you have about a 40 kilowatt load on them.

Q. Well, do you know whether or not we have studied that con-
[fol. 116] dition and know what will be required on those transformers?

A. If you ever did you didn't make any change. It was there before you bought the plant.

Q. And we are still operating it?

A. Yes, and on those two 5 k.w. load.

Q. So that the different examples that you have cited are based simply on the supposition——

A. No, sir, I have not made any supposition whatever. Everything I have said——

Q. Well, wait until I finish my question; are based on the supposition that if the customer chose he could change the form of his bill or the amount of his bill by changing the motors or the installation with reference to the load?

A. That was suggested to me by Mr. Wahn.

Q. And thereby the customer can make a saving that would be a very large per cent upon the amount of the investment each month?

A. In a great many instances.

Q. And if they do not choose to do so why the company, having fixed rules that have been approved, are not required to make this additional investment for the special saving of customers operating peculiar particular electrical devises such as elevator motors; that is the solution of it isn't it?

A. I had assumed that The Ohio Utilities Company would want to make a rate in Hillsboro that would satisfy the customers, and they can be satisfied; they can be easily satisfied. They want to have an increase in rate over the old rate, but they don't want to pay any exorbitant prices.

Mr. Martin: Well, I don't know of anything further.

[fol. 117] PART 1, EXHIBIT A-1 TO STANLEY'S TESTIMONY

(Known also as Exhibit "A" attached to application for rehearing dated July 25, 1921.)

April 14, 1921.

Mr. L. G. White, Chief Engineer the Public Utilities Commission, Columbus, Ohio.

DEAR SIR: I have investigated the above matter at Hillsboro and at the company's offices in Columbus.

The P. U. C. O. No. 3 electric schedule filed to become effective August 26, 1920, increased the rates for electric service in general, as follows:

	Old rate		New rate
All K. W. H.	.05.5		.10
Residence and Commercial Lighting:			
First 200 K. W. H.	.10		.15
All over 200 K. W. H.	.10		.12
Minimum charge	.50	Month	1.00
Employees' Residence Lighting:			
All K. W. H.	.04		.05
Minimum charge	.50	Month	1.00
Heating and Cooking:			
First 100 K. W. H.	.04		.07
All over 100 K. W. H.	.04		.06
Minimum charge	.50	Month	3.50
	per K. W. H. connected.		
Private Garage:			
All K. W. H.	.75.5		.10
Minimum charge	.50	Month	2.00
Power:			
Maximum demand charge	1.50	K. W.	2.00
First 500 K. W. H.	.04		.06
[fol. 118] Next 500 K. W. H.	.04		.05
Next 1,000 K. W. H.	.03		.04.5
Next 500 K. W. H.	.03		.04
Next 2,000 K. W. H.	.02.5		.04
Next 2,500 K. W. H.	.02.0		.04
Over 7,000 K. W. H.	1.75		.04

Customer owned Meter Allowance per month:

Up to 10 Amp. 1 Phase	No allowance	15¢
15 to 40 Amp. 1 Phase	No allowance	25¢
Above 40 Amp. 1 Phase	No allowance	30¢
All sizes—Polyphase	No allowance	30¢

(Two-thirds of all meters are customer owned.)

Cost of Service for 12 Months Ending August 31, 1920, Effective Date of New Schedule

From examination of the company records, I find the operating expenses assignable to electric service, for the 12 months ending August 31, 1920, to be:

Operating Expenses, Maintenance, and Taxes

Generating:		
Power station labor	$4,084.05	
Fuel	17,608.75	
Miscellaneous	2,560.32	
Total—Generating		$24,253.10
Distribution:		
Overhead system	$766.01	
Meter repairs	262.42	
Street lights	142.70	
Miscellaneous	191.84	
Total—Distribution		1,362.97
[fol. 119] General:		
General officers	$549.00	
Clerks	1,119.09	
Office exp. and supplies	469.23	
Rents	652.60	
Telephones	120.24	
Store room exp.	62.36	
Garage	306.78	
Advertising	3.96	
Insurance	680.00	
Miscellaneous	42.01	
Total—General		4,005.27
Total operating and maintenance		$29,621.34
Taxes		2,760.00

Property Valuation to Date

I have made inventory and tentative appraisal of the property used and useful for electric service on basis of general prices obtaining over 5 year period ending August 26, 1920. The reproduction cost less depreciation is $154,656.00 as of August 26, 1920.

Total Cost of Service

We now have for the year ending August 31, 1920, the following total cost-of-service:

Operating and maintenance expense	$29,621.00
Taxes	2,760.00
Depreciation allowance, 5% on $154,656.00	7,733.00
Eight per cent return on $154,656.00	12,372.00
Total cost of service	$52,486.00

[fol. 120] Effect of New Rate Applied to Business of Above Year

During the above 12 months ending August 31, 1920, the business done by the electric department was as follows:

	K. W. H. sales	Revenue received
Residence and commercial light	228,770	$23,961.00
Street lights	53,664	3,470.00
Power	233,429	10,331.00
Totals	515,863	$37,762.00
Rent received from ice company for power plant space		1,200.00
Total		$38,962.00

If P. U. C. O. No. 3 schedule had been effective during the above 12 months the following revenue would have been received:

Residence and Commercial:

Light	$32,903.00
Street lights	3,870.00
Power	16,172.00
Total	52,945.00
Rent received from ice plant	1,200.00
Total	$54,145.00

We see, therefore, that the cost of electric service for the above 12 months was $52,486.00; that the actual electric revenues and ice company rental received were $38,962.00, which gives about 4.26% for both depreciation allowance and return on the property; and that the revenues, if the P. U. C. O. No. 3 protested schedule had been [fol. 121] in effect, would have been $54,145.00, which would give 14.05% available for both depreciation allowance and return on the property.

Considering 13%, depreciation allowance 5% plus 8% rate of return, as proper, we see that on basis of above 12 months the P. U. C. O. No. 3 schedule rates are slightly excessive.

We now will consider another 12 month period, 6 months prior to and 6 months subsequent to August 31, 1920, effective date of P. U. C. O. No. 3.

March 1, 1920, to February 28, 1921—Operating Expenses

Generating:

Maintenance and Taxes

	March-August, 1st 6 months	Sept.-Feb., 2nd 6 months	
Power station labor	$1,986.60	$2,405.44	
Fuel	9,097.20	12,319.38	
Miscellaneous	1,150.37	1,863.31	
Total generating .	$12,234.17	$16,588.13	$28,822.30
Distribution:			
Overhead system	$384.09	$886.36	
Meter repairs	119.60	242.50	
Street lights	47.20	73.85	
Miscellaneous	40.41	151.49	
Total distribution.	$591.30	$1,354.20	$1,945.50
General:			
General officers	$309.00	$425.00	
Clerks	598.89	871.20	
Office exp. and sup	261.01	362.38	
Rents	424.60	333.00	
Telephones	68.20	71.74	
[fol. 122] Store room expense	31.47	48.54	
Garage	222.66	223.04	
Advertising	3.96	8.50	
Insurance	360.00	360.00	
Miscellaneous	12.66	72.20	
Total general	$2,292.45	$2,775.60	$5,068.05
Total operating and maintenance ...	15,117.92	20,717.93	35,835.85
Taxes	1,381.00	1,528.00	2,909.00

Total Cost of Service

We now have for the 12 months ending February 28, 1921, (6 months prior and 6 months subsequent to effective date of advanced rate) the following total cost of service:

Operating and maintenance	$35,836.00
Taxes	2,909.00
Depreciation allowance, 5% on $154,656.00	7,733.00
8% return on $154,656.00	12,372.00
Total cost of service	$58,850.00

Effect of New Rate Applied to Business of Above Year

	K. W. H. sales	Revenue
Residence and commercial light	236,187	$33,970.00
Street lights	53,443	3,854.00
Power:		
Energy	238,102	11,216.00
Demand	220 K. W.	5,280.00
Total electric		$54,320.00
[fol. 123] Add rent from ice company		1,200.00
Total revenue		$55,520.00

We see, therefore, that the cost of electric service for the above 12 months was $58,850.00, and that if the P. U. C. O. No. 3 protested schedule had been in effect for the entire 12 months the revenues would have been $55,520.00, which represents 10.8% available for both depreciation allowance and return on the property.

Considering 13%, depreciation allowance 5% plus 8% rate of return, as proper, we see that on basis of above 12 months the P. U. C. O. No. 3 schedule of rates is as a whole, not excessive.

Apportionments

In the above statements of operating expenses the apportionments between electric and ice operation are in general as follows:

Power station labor and fuel, 70% electric and 30% ice for months of May, June, July, August; 75% electric and 25% ice for September; 80% electric and 20% ice for October and March; 85% electric and 15% ice for November and April; 90% electric and 10% ice for December, January and February.

General expenses are apportioned 60% electric, 20% ice, and 20% gas.

From the record of the testimony the impression is given that the ice company is unduly profitable. The fact is that for the past year

the profits of the ice company were only a few hundred dollars. From my personal investigation, I believe the apportionments of oper- [for 124] ating expenses between the electric plant and the ice plant are fair and equitable to both plants.

The average cost per ton, including freight and handling over a period of 14 months, as shown by invoices paid by The Ohio Utilities Company, was:

1920, Jan.	$3.25
Feb.	6.59
March	4.35
April	5.02
May	6.87
June	4.68
July	12.87
Aug.	10.35
Sept.	6.96
Oct.	4.68
Nov.	8.01
Dec.	7.52
1921, Jan.	6.82
Feb.	5.34

Recommendations

I recommend that P. U. C. O. No. 3, The Ohio Utilities Company, electric service, Hillsboro, Ohio, filed to become effective August 26, 1920, be approved.

Yours truly, Thomas D. Pierce, Appraisal Engineer. TDP—GE.

("Order Fixing Just and Reasonable Rates for Electric Service" given complete in journal entries of Public Utilities Commission, filed herewith. See page 21 of Record.)

Before the Public Utilities Commission of Ohio

Application for Rehearing—Filed July 25, 1921

Now comes the Ohio Utility Company, respondent to the complaint filed in the above matter, a public utility corporation organized under the laws of Ohio and serving the village of Hillsboro and the inhabitants thereof with electric service, and petitions the [fol. 125] Honorable Public Utilities Commission for a rehearing of the above matter, and that the order thereof fixing certain rates for public utility electric service prescribed therein, which order is hereto attached and marked Exhibit "C," be set aside and held for naught, and that the schedule heretofore filed by said company, effective as of August 26, 1920, be restored and made the effective schedule for said service. This application is based on the following facts:

1. That the judgment, decision and order of the Commission are contrary to the laws of the State of Ohio.

2. That the said judgment, decision and order of said Commission are contrary to the weight of, against, and not supported by any testimony offered at the hearing of said cause before this Commission.

3. That said judgment, decision and order, if enforced, will confiscate and take from The Ohio Utilities Company its property at Hillsboro, Ohio, without due process of law, and without allowing to said company an adequate—or in fact any substantial return on the value of said property—in contravention of the laws and constitution of the State of Ohio and of the United States.

4. That said judgment, decision and order are contrary to the findings as made by the special examiner and the chief engineer of this Commission as shown by their reports, copies of which are hereto attached and marked Exhibits "A" and "B," and which reports were not introduced in evidence at the time of said hearing, and were not in possession of or accessible to the officers of said company.

[fol. 126] 5. That since the issuance of the judgment, decision and order of this Commission, The Ohio Utilities Company has applied said proposed rates fixed in said order to its earnings since the filing of said schedule, and if said rates are to be promulgated, sustained and applied same will result in a refund by this company to the patrons thereof of the sum of $5,597.09; that the earnings to which said company is entitled upon the valuation as found by the engineers of this Commission and approved and not set aside by said Commission, would be $16,754.40; thus creating a deficiency in the operating, earnings and depreciation charges to which said company is entitled of the sum of $7,700.99, (as shown by Exhibit "D" hereto attached and made a part hereof), when as a matter of fact the company was already operating at a loss of $2,103.90, as shown in said exhibit.

6. That the judgment, decision and order as made by this Commission was upon the arbitrary and personal opinion of said Commission to the effect that the cost of material and labor of said company at its plant in Hillsboro would be reduced over the cost of said material and labor as found by the special examiner and the chief engineer of this Commission. This applicant has attached hereto Exhibit "E" showing the estimated gross earnings and operating expenses, electric department, Hillsboro Division, of The Ohio Utilities Company for future 12 months' period ending July 1, 1922, and Exhibit "F" showing the cost of coal and labor to July 1, 1921, and a forecast for six months following, and same does not justify nor sustain the supposition and opinion of said Commission that said reduction will take place.

[fols. 127–134] 7. That said judgment, decision and order of the Commission are wholly against the weight of the testimony, the laws of the land, and is an injustice to said utilities company.

Wherefore, your applicant prays that upon the rehearing of this cause, said Commission will vacate and so modify its former order

heretofore made on July 5, 1921, as to permit and direct the taking effect and the continuance thereof of said Schedule P. U. C. O. No. 3, effective August 26, 1920, and for such other relief as this applicant may be entitled to.

The Ohio Utilities Company, By John P. Phillips, President.
By J. C. Martin, Secretary.

[Duly verified.]

EXHIBIT A TO APPLICATION—Omitted; printed side page 117 ante

[fol. 135] EXHIBIT B TO APPLICATION

The Public Utilities Commission of Ohio, Columbus, Ohio.

GENTLEMEN: The investigation in this case was made by Commission's engineer, T. D. Pierce, at the office of The Ohio Utilities Company in Columbus and at Hillsboro.

This Commission did not have in its files data from which we could arrive at the reasonable value of the property used and useful in the furnishing of electric service at Hillsboro. Therefore, we found it necessary to make an inventory and valuation of that property. This has been done and the summary of the used and useful property as of August 30, 1920, is as follows:

Buildings, description:	Reproduction value	Total depreciation	Present value
Buildings	$29,856.43	$1,573.83	$28,282.60
Power plant equip., less piping	48,274.79	12,870.36	35,404.43
Piping and fittings	2,714.50	814.35	1,900.15
Generating equipment	15,433.02	1,738.65	13,694.37
Distribution system	28,581.12	3,354.90	25,226.12
[fol. 136] Services	4,362.90	213.57	4,149.33
Meters and transformers	13,904.42	1,248.05	12,656.37
Office furniture and fixtures	601.80	26.27	575.53
Tools	435.58	68.34	367.24
Sub total	$144,184.56	$21,908.41	$122,276.15
Intangibles and Overheads:			
Prelim. organization expense	5,000.00	.....	5,000.00
Taxes during construction, 1½% for 1 year	1,081.38	.....	1,081.38
Sub total	$150,265.94		$128,357.53
Interest at 6% for 1 year	4,507.98	.....	4,507.98
Stock on hand	1,071.00	.....	1,071.00
Working cap. 1/12 year, 1 month coal	4,198.42	.....	4,198.42
Total property used and useful	$160,043.34	$21,908.41	$138,134.93
Additions and betterments, capital account expenditures Mar. 1917 to Aug. 30, 1920	18,357.00	1,836.00	16,521.00
	$178,400.34	$23,744.41	$154,655.93

[fol. 137] In the investigation of this case the Commission's engineers have used $154,655.93 as the fair value of the property for rate-making purposes.

The Commission's engineers have determined the cost of service for two periods:

First. For 12 months ending August 31, 1920, and

Second. For the 12 months ending February 28th, 1921,—the latter period being 6 months prior to and 6 months subsequent to the effective date of the schedule in question, and it appears that the schedule is and has been reasonable.

Therefore, I recommend that the schedule be permitted to remain in the active files of the Commission.

Yours very truly, (Signed) L. G. White, Chief Engineer.
LHW—GE.

EXHIBIT C TO APPLICATION

The Commission having heretofore, upon complaint filed by the Business Men's Association of Hillsboro, Ohio, by order duly made herein, suspended the going into effect of the proposed increased rates and charges for electric service at Hillsboro, Ohio, contained in a schedule designated P. U. C. O. No. 3, filed by The Ohio Utilities Company to become effective August 26, 1920, (which proposed rates and charges were thereafter collected by said respondent under authority of its undertaking duly filed herein), and entered upon an investigation to determine the propriety of said proposed increased rates;

[fol. 138] This day, after full hearing, due notice of the time and place of which was given pursuant to law, said matter came on for consideration.

The Commission, being fully advised in the premises, and taking into consideration the value of the respondent's property used and useful for the convenience of the public in furnishing said service, the cost of furnishing said service and the necessity for making reservations from income for depreciation and contingencies, finds:

That the said proposed rates and charges set forth in said schedule P. U. C. O. No. 3, save and except the following:

Residence and Commercial lighting:

15c. per k. w. hour for the first 200 kilowatt hours, net,
12c. per k. w. hour for all over 200 kilowat- hours, net,

Private Garage Automobile Charging:

Minimum bill, $2.00 per month, which rates and charges in so far as they exceed the following:

Residence and Commercial Lighting:

12c. per k. w. hour for the first 200 kilowat- hours, net,
10c. per k. w. hour for all over 200 kilowat- hours, net,

Private Garage Automobile Charging:

Minimum bill $1.00 per month, net,

hereby are found and determined to be excessive, unjust and unreasonable—are not unjust, unreasonable or excessive, and will not yield a rate of return greater than the said The Ohio Utilities Company is entitled to earn upon its said property. It is therefore

Ordered, that the following rates and charges:

[fol. 139] Residence and Commercial Lighting:
12c. per k. w. hour for the first 200 kilowat- hours, net,

10c. per k. w. hour for all over 200 kilowat- hours, net,

Private Garage Automobile Charging:

Minimum bill $1.00 per month, net,
be submitted for the rates and charges heretofore found and determined to be excessive, unjust and unreasonable.

It is further

Ordered, that said The Ohio Utilities Company be, and hereby it is notified, directed and required to correct its schedule to conform to the findings hereinbefore set forth; it is further

Ordered, that authority be, and hereby it is granted said company to correct by interlining in red ink the schedule on file now with this Commission to conform hereto. It is further

Ordered, that said The Ohio Utilities Company be and it hereby is notified, directed and required to refund to all consumers served under said schedule designated P. U. C. O. No. 3, either in cash or by credit on current bills, any difference there may be in the rates and charges herein found by the Commission to be just and reasonable; whereupon the undertaking heretofore filed herein shall be discharged and released. It is further

Ordered, that as to all other matters this investigation be, and hereby it is discontinued.

[fol. 140] EXHIBIT D TO APPLICATION

Statement Gross Earnings and Operating Expenses Electric Department, Hillsboro Division, the Ohio Utilities Company, 10 Months Ending July 1, 1921, Operating under P. U. C. O. No. 3, Effective August 26, 1920

Gross Earnings 10 Months Ending July 1, 1921

Class of service	As reported
Residence and commercial lighting	$29,300.82
Street lighting	3,649.01
Power	13,904.24
Rent from ice company	1,000.00
Total gross earnings	$47,854.07

Operating ex. Sept. 1, 1920, 6 months, Mar. 1, 1921	Taken from report T. D. Pierce, ap. engr. for com. 4-14-21	Operating exp. 3-1-21, 4 months 7-1-21	Total operating exp. 10 months ending July 1, 1921
Generating:			
Power station labor	$2,405.44	$1,372.98	$3,778.42
Fuel	12,319.38	4,650.24	16,969.62
Miscellaneous	1,863.31	1,389.36	3,252.67
Total	$16,588.13	$7,412.58	$24,000.71
Distribution:			
Overhead system	886.36	333.00	1,219.36
Meter repairs	242.50	82.75	325.25
Street lights	73.85	54.96	128.81
Miscellaneous	151.49	77.04	228.53
Total	$1,354.20	$547.75	$1,901.95
[fol. 141] General:			
General officers	425.00	343.00	768.00
Clerks	871.20	611.24	1,482.44
Office exp. and sup	362.38	298.27	660.65
Rents	333.00	253.20	586.20
Telephones	71.74	43.89	115.63
Store room expenses	48.54	26.78	75.32
Garage	223.04	142.22	365.26
Advertising	8.50	2.40	10.90
Insurance	360.00	240.00	600.00
Miscellaneous	72.20	17.67	89.87
Total	$2,775.60	$1,978.67	$4,754.27

Operating ex. Sept. 1, 1920, 6 months, Mar. 1, 1921	Taken from report T. D. Pierce, ap. engr. for com. 4-14-21	Operating exp. 3-1-21, 4 months 7-1-21	Total operating exp. 10 months ending July 1, 1921
Total operating and maintenance	$20,717.93	$9,939.00 (same ratio)	$30,656.93
Taxes	1,528.00	1,018.64	2,546.64
Total operating ex. (including taxes)	$22,245.93	$10,957.64	$33,203.57

Recapitulation

Gross earnings:		
10 months ending July 1, 1921	$47,854.07	$47,854.07
Operating Expenses:		
10 months ending July 1, 1921:		
Generating	24,000.71	
Distribution	1,901.95	
General	4,754.27	
Taxes	2,546.64	$33,203.57
[fol. 142] Net Earnings		14,650.50

(Available to apply against interest on investment 8%, and depreciation allowance 5%—yearly—as allowed by Public Utilities Commission of Ohio.)

Interest on Investment:		
8% $154,656.00, 10 months	$10,310.40	
Depreciation Allowance:		
5% $154,656.00	6,444.00	16,754.40
Deficit		$2,103.90

(This deficit represents the amount which the electric department of the Hillsboro Division of The Ohio Utilities Company failedl to earn during the 10 months' period ended July 1, 1921,—but which amount they were entitled to earn.)

[fol. 143] Proposed Rebate to Residence and Commercial Lighting Consumers in Conformity with Order of the Public Utilities Commission of Ohio Dated July 5, 1921, Advanced Utility Rate Proceeding No. 21

Year	Month	Net revenue earned under P. U. C. O. No. 3, effective Aug. 26, 1920	Net revenue earned under proposed rates P. U. C. O. dated 7-5-21, adv. util. rate proceed. No. 21	Proposed refund rebate or credit to residence and commercial lighting consumers
1920,	Sept.	$2,232.07	$1,827.49	$404.58
	Oct.	2,780.10	2,255.43	524.67
	Nov.	3,684.36	2,963.75	720.61
	Dec.	3,691.94	2,961.11	730.83
1921,	Jan.	3,690.57	2,947.05	743.52
	Feb.	3,020.28	2,435.95	584.33
	March	2,882.07	2,336.17	545.90
	April	2,614.06	2,131.81	482.25
	May	2,410.24	1,980.71	429.53
	June	2,453.16	2,022.29	430.87
	Final deficit			$7,700.99
	Final deficit			$7,700.90

(If rebate or refund should be made, complying with order of the Public Utilities Commission of Ohio, dated July 5, 1921, Advanced Utility Rate Proceeding No. 21, The Ohio Utilities Company (Hillsboro Division Electric Department) would show a total op-[fol. 144] erating deficit of $7,700.99 covering 10 months' period, the company being entitled to earn a reasonable return of 8% plus 5% depreciation on the Commission's fixed value of the property, to wit, $154,656.00).

EXHIBIT E TO APPLICATION

Estimate Gross Earnings and Operating Expenses Electric Department, Hillsboro Division, the Ohio Utilities Company, Future 12 Months' Period Ending July 1, 1922, Operating under P. U. C. O. No. 3, Effective August 26, 1920.

Gross Earnings

Class of Service:	12 months' period
Residence and commercial lighting	$34,000.00
Street lighting	4,000.00
Power	16,104.24
Rent from ice company	1,200.00
	$55,304.24

Operating Expenses

Generating:	
Power station labor	$4,534.10
Fuel	21,000.00
Miscellaneous	3,903.19
Total	$29,437.29

Distribution:	12 months' period
Overhead system	$1,490.48
Meter repairs	390.29
Street lights	257.62
Miscellaneous	292.02
Total	$2,430.41

[fol. 145] General:

General officers	$1,006.00
Clerk	1,872.08
Office expense and supplies	878.12
Rents	757.60
Telephones	138.75
Store room expense	90.38
Garage	438.30
Advertising	150.00
Insurance	720.00
Miscellaneous	107.83
Total	$6,159.06
Total operating expenses	$38,026.76
Taxes	3,000.00
Total operating expenses (including taxes)	$41,026.76

Recapitulation

Gross earnings		$55,304.24
Operating expenses		41,026.76
Net earnings		$14,277.48
Interest on Investment:		
8% $154,656, 12 mos.	$12,372.48	
Depreciation Allowance:		
5% $154,656, 12 mos.	7,732.80	
		20,105.28
Deficit		$5,827.80

(This estimate shows that a considerable reduction could be experienced in prices for labor, fuel and miscellaneous materials, and yet there would be a failure to earn or produce a net earnings figure to which the company supplying the service is justly entitled—even with the P. U. C. O. No. 3 rates, effective August 26, 1920, operative.)

EXHIBIT F TO APPLICATION

Comparative Averaged Coal Costs

6—625

6 Months' Period

Period	Tons of coal	Total invoiced price	Average inv. price per ton	Total freight charges	Average freight charges per ton	Total labor charges	Average labor charges per ton	Total coal costs	Average total coal costs
1920.									
Jan.	390.40	$989.34		$264.32		15.48		$1,269.14	3.25
Feb.	110.08	304.19		370.28		50.63		725.10	6.59
March	194.90	580.19		240.23		27.82		848.24	4.35
April	210.05	641.00		378.45		34.10		1,053.55	5.02
May	241.44	1,137.04		497.15		25.95		1,660.14	6.88
June	478.66	1,800.20		405.87		34.74		2,240.81	4.68
6 mos. total..	1,625.53	$5,451.96	$3.35	$2,156.30	$1.33	188.72	.12	$7,796.98	4.80

6 Months' Period

Period	Tons of coal	Total invoiced price	Average inv. price per ton	Total freight charges	Average freight charges per ton	Total labor charges	Average labor charges per ton	Total coal costs	Average total coal costs
1920.									
July	212.35	$1,792.61		$899.35		41.08		$2,733.04	12.87
August	136.15	872.91		478.27		58.07		1,409.35	10.35
Sept.	664.90	3,426.96		1,170.04		30.45		4,627.45	6.96
Oct.	449.90	1,833.43		196.44		76.22		2,106.09	4.68
Nov.	345.13	1,930.17		744.09		90.28		2,764.54	8.01
Dec.	643.20	3,406.83		1,316.42		114.43		4,837.68	7.52
6 mos. total..	2,451.63	$13,262.91	$5.41	$4,804.61	1.96	410.53	.17	$18,478.15	7.54
12 mos. total.	4,077.16	18,714.87	4.59	6,961.01	1.707	599.25	.147	26,275.13	6.444

6 Months' Period

Period	Tons of coal	Total invoiced price	Average inv. price per ton	Total freight charges	Average freight charges per ton	Total labor charges	Average labor charges per ton	Total coal costs	Average total coal costs
1921.									
Jan.	229.80	$768.00		$633.33		10.38		$1,411.71	
Feb.	371.80	782.64		941.54		20.40		1,744.58	
March	378.90	760.33		973.85		10.83		1,745.01	
April	156.95	329.58		429.63		12.71		771.92	
May	267.60	663.78		685.76		8.55		1,358.09	
June	580.20	1,218.40		1,588.37		25.40		2,832.17	
6 mos. total..	1,985.25	$4,522.73	$2.277	$5,252.48	2.644	88.27	.044	9,863.48	4.965

Average total costs (per ton) year ending December 31, 1920 ..... 6.444
Averaged total coal costs (per ton) six months, ended July 1, 1921..... 4.965
Per cent of decrease..... 23%
Averaged total coal costs (per ton) 6 months ended December 21, 1920..... 7.54
Averaged total coal costs (per ton) 6 months ended July 1, 1920..... 4.80
Per cent of increase..... 57%
Averaged total coal costs (per ton) 6 months ended July 1, 1921..... 4.96
Applying per cent of increase, period 6 months ended December 31, 1920, over 6 months ended July 1, 1920, would produce average cost for 6 months' period ended December 31, 1921..... 7.78

(Taking results of above figures into consideration, and from our knowledge of coal market conditions, we are of the opinion total fuel costs for period of one year ending July 1, 1922, will be as high for yearly period ended December 31, 1920, or approximately $21,000.00.)

[fol. 148] Comparative Pay-roll Figures

Directly Applying to Electrical Department

Six months' period, July 1, 1920	$4,262.76
Six months' period, July 1, 1921	5,105.33
Per cent of increase	19%

(We do not anticipate any decrease in labor costs during the yearly period ending July 1, 1922.)

Present Wages Electric Department)

John Mullenix, superintendent, per month	$110.00
Estel Stevens, chief engineer, per month	105.00
Day station engineer, covering 30-day period	97.50
Night station engineer, covering 30-day period	105.00
Day station fireman, covering 30-day period	90.00
Night station fireman, covering 30-day period	90.00
Common labor, per hour	.30

(The above rates for labor, by the mere statement of the amount paid, carries the proof and conviction that no reduction therein can be made, as the same are and have been throughout the period of the war at pre-war rates.)

(Entry granting rehearing, dated August 19, 1922. Entry given complete in journal entries of Public Utilities Commission filed herewith. See page 24, of Record.)

Ralph Madison, called on behalf of The Utilities Company, being first duly sworn, testified as follows:

Examined by Mr. Martin:

Q. Please state your name, residence and business, Mr. Madison?

A. Ralph Madison, General Auditor of The Ohio Utilities Com-
[fol. 149] pany; principal office, 414 Gasco Building, Columbus, Ohio.

Q. I will ask you, Mr. Madison, if you are familiar with the books of the company and especially directing your attention to the financial transactions of the Hillsboro Division of The Ohio Utilities Company?

A. I am.

Q. Now, Mr. Madison, in connection with Exhibit A-1, a portion of which is a former exhibit in this case, I will ask you to examine this exhibit and say to the Commission what portions of it are new or added matter to that heretofore introduced before the Commission in this case.

A. The new matter in the exhibit now presented as exhibit A-1 in this case is covered on pages 20a, 20b, 20c, and page 28; four new pages.

Q. Now, Mr. Madison, I wish that you would examine page 20b and make explanation of the tabulation of figures contained on that page?

A. Referring to page 20b, this page is a recapitulation statement of the gross earnings and operating expenses, electric department, Hillsboro Division of The Ohio Utilities Company for a 25 months period starting September 1st, 1920, and ending September 30th, 1922.

The total recapitulated figures are contained in the last column, showing that the Hillsboro Division, Electric Department, of The Ohio Utilities Company had a total gross earnings, covering a consecutive 25 months period, of $118,182.76, total operating expenses, including taxes, covering the same period, of $81,829.14, and a net earning covering the same period of $36,353.62.

[fol. 150] Taking the valuation as found by the Engineering Department of The Public Utilities Commission of Ohio, $154,656.00, figuring an interest on that investment of 8 per cent, and taking the same figures of valuation and figuring 5 per cent depreciation, shows that The Ohio Utilities Company, during the period of 25 months ending September 30th, 1922, has failed to earn an amount of $5,532.38 to which they are entitled.

Q. I would ask you, Mr. Madison, if any part of these figures and operating expenses have been checked by an auditor or engineer of the Commission?

A. As I remember it, referring to the previous pages in this exhibit, six months of the figures contained in this 25 months statement, as it is compiled here, have been checked by accountants of The Public Utilities Commission. Now at a later period, I think perhaps another period of 12 months, which is covered here, was checked by the Accounting Department of The Public Utilities Commission.

Q. And the result of that checking is contained in this exhibit as the report of the Appraisal Engineer and Chief Engineer of the Commission?

A. Yes.

Q. Now, what, if anything, do you know of a recent check being made by the Engineering Department and Accounting Department of the Commission?

A. Well, I think, as I remember——

Mr. Huggins: We better have the best evidence as to that, Mr. Martin, had we not?

Mr. Martin: I beg pardon?

Mr. Huggins: Had we better not have the best evidence as to that, which would be the representatives of the Commission who did the checking?

[fol. 151] Mr. Martin: Yes, but this is as to a fact, whether or not it was checked, the first matters that I inquired of being public records. In other words, they have furnished us with copies of those checks. There is a rule of the Commission that they do not give out, except upon order of the Commission, the result of the check-

ing. Now we know, for the reason that we turned over our vouchers and books, that within the last six weeks they have checked our books, but the result of that check we do not know and are not able to find out unless the Commission makes an order. We are merely introducing testimony to the effect that the check has been made. We do not know the result of that check, because we have no means of finding out, and I doubt very much if the Commission will permit us to call their engineer to testify as to the result of that investigation, but they will have it themselves, and we wish it to go into the record that the check has been made, because we know of the fact that it has been made.

Commissioner Maullar: You know nothing about the result?

Mr. Martin: No, sir; we have not received any information.

Mr. Huggins: The witness has already testified to the fact that a check was made. There is no objection to that.

Mr. Martin: Well, I just asked him if this recent check—there has been a check made within six weeks, and we know nothing as to the result of that check. All I want in the record is the fact that the check has been made, because they took our books and papers.

[fol. 152] Mr. Huggins: There is no objection to that.

(Question read.)

A. I have personal knowledge of a check having been made by the accounting department and the engineering department of The Public Utilities Commission; approximate date, the latter part of July, 1922. Now what the result of that check is I have no knowledge.

Q. Mr. Madison, I wish, for the purpose of the record, you would give us the pages in exhibit A-1 from which you make up your tabulation of 20b?

A. Referring to page 20b, of the total figures shown in the right hand column, these figures are made up from figures taken from page 13, page 19 and page 20a of Exhibit A-1.

Q. Mr. Madison, I wish to call your attention to the find page 28 of Exhibit A-1; I wish you would advise the Commission as to the data that this refers to?

A. Referring to page 28 of Exhibit A-1, this is a statement of gross earnings and operating expenses of the gas department, Hillsboro Division of The Ohio Utilities Company for elevent months ended September 30, 1922, operating under P. U. C. O. No. 2, effective August 26th, 1920. This statement shows a total gross earnings for the period ended—11 months period ended September 30, 1922, of $11,356.95; total operating expenses, including taxes, covering the same period, $12,823.02, or a deficit as between the gross earnings and operating expenses of $1,466.07.

The approximate valuation as determined by The Public Utilities Commission of the gas department property is $70,000.00. Figuring 8 per cent interest on the investment, 5 per cent for depreciation, covering the period of 11 months, or $8,341.63, shows a total [fol. 153] deficit of $9,807.70, which the company was entitled to

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earn during this 11 months period which they did not earn. These figures have been taken from the books and records in our Columbus office of the Hillsboro plant.

Q. And the same community is served by the gas as is served by electricity?

A. Yes, sir.

Mr. Martin: I believe you may cross-examine.

Cross-examination.

By Mr. Huggins:

Q. What proportion of the salaries of The Ohio Utilities Company is charged to the Hillsboro branch, Mr. Madison?

A. I hardly understand your question; what proportion of what salaries?

Q. Of the total salaries of The Ohio Utilities Company in the head office here in Columbus?

A. I could not answer that directly without referring to the records. It is based somewhat upon the gross earnings of our different properties. We have several properties, you understand.

Q. Is that division arbitrarily made by The Ohio Utilities Company's officers?

A. Yes.

Q. Does it appear in any of the figures submitted by any of the exhibits that you may have made in this hearing or former hearings in the same case?

A. Not where it would be directly reflected, no, sir.

Q. On what basis is that apportionment made?

A. Well, somewhat upon the gross earning of the property. There are four or five divisions of the property of The Ohio Utilities [fol. 154] Company. We serve Delaware, Circleville, Hillsboro and Gallipolis, and we have a transmission line in our fifth division that——

Q. What do the books of The Ohio Utilities Company show they paid for the Hillsboro branch of their business?

A. The Hillsboro property was purchased by an order of the Commission. They made application to purchase the property.

Q. I did not ask you that, Mr. Madison; I asked you what it cost?

A. Well, I don't know whether these figures——

Q. I don't care anything about that appraisal; I asked you what it cost; that is, what your books show it cost? You are testifying only as to what the books show, I believe?

A. Well, I don't remember just exactly what the purchase price was. By referring to the books I could tell what the purchase price was by capital issued as against it by order of the Commission. I know we issued $120,000.00 of bonds and some preferred stock and some common stock. It is a matter of record here with the Commission, and that was the purchase price.

Q. What year was it brought in, Mr. Madison?

A. It was taken over as of October 23rd, 1917.

Q. Was that purchased direct by The Ohio Utilities Commission from The Hillsboro Light & Fuel?

A. Yes, sir.

Q. Well, the tax value, as shown by your records here, in 1916, the year before the purchase, was $30,760. Now you say that the purchase price was this bond issue, plus some preferred stock.

A. Well, in explaining the procedure, we make application to buy [fol. 155] and sell before The Public Utilities Commission, and the Public Utilities of Ohio tells us how much capital can be issued as against the purchase of a property. I remember that there were $120,000.00 of bonds issued, and it seems to me $22,000.00 of common stock. I haven't the figures here.

Q. Well, it is not the amount of securities authorized by this Commission that I am trying to get. What I want is the purchase price of the Hillsboro Light & Fuel Company by The Ohio Utilities Company in 1917?

A. The only thing the books and records of The Ohio Utilities Company would show as to that purchase price would be the securities ordered to be issued as against the purchase of that property by The Public Utilities Commission.

Q. Disregarding the books of The Ohio Utilities Company, which do not show the purchase price of what they have bought, what did they pay?

A. I don't know.

Q. Now, Mr. Madison, in the valuation of the physical plant of the Hillsboro Branch of The Ohio Utilities Company, will you kindly refer to your records there and tell me what it was for the power plant?

A. Well, the valuation as presented in Exhibit A-1 is the valuation as determined by the Commission, $154,000.00 plus on the electric plant and approximately $70,000.00 on the gas.

Q. I am asking for the power plant of the Hillsboro Light & Fuel Company?

A. I have no division of those particular figures in this Exhibit A-1.

Q. Let me ask you again to refer to your records and tell me what the electric light and power plant is valued at by the Commission?

A. Do you mean the original valuation?

Q. The present valuation?

A. I have no record of that. I have no record of the division of [fol. 156] the figures of the engineering department of The Public Utilities Commission making up the total figure of $154,000.00.

Mr. Barree: Isn't that on page 9 of that exhibit?

Mr. Martin: Mr. White's report on pages 9 and 10 gives those figures and we adopt them and use them in this case.

The Witness: Referring to page, the total valuation, present value, in Mr. White's report, chief engineer of The Public Utilities Commission, for buildings, power plant equipment, piping and fittings, generating equipment, distribution system, services, meters

and transformers, office furniture and fixtures and tools, is $122,276.15, without any intangibles or overheads. With the tangibles and——

Q. Pardon me for interrupting you, I care nothing about that. My question refers to the power buildings of the electric light plant.

A. Well, referring to page 9, there is an item of buildings, present value, of $28,282.60.

Q. Is that building—if you are qualified to answer—adequate for the production of electric power, electric current, or whatever may be used for the City of Hillsboro?

A. I am not qualified to answer that question.

Q. Do the books of The Ohio Utilities Company anywhere make any division of the appraisal of that building between the ice manufacturing and the electric current manufacturing?

A. Yes, sir.

Q. Can you produce it here for the Commission?

A. Well, the books of The Ohio Utilities Company reflect first the appraisal——

Q. Pardon me, Mr. Madison, my question is, can you produce [fol. 157] that division or appraisement of the power plant between the ice manufacturing and the electric current manufacturing?

Mr. Huggins: Perhaps I might explain to the Commission that they have a power plant devoted to the production of electric current and also to the manufacture of artificial ice, and we protest the showing of the records, if the Commission please, as produced here, the appraisal of the valuation of that plant for the reason that it is largely in excess of the electric light current manufacturing requirements, and a great part of it is devoted to the manufacture of artificial ice, for which a rental of $100.00 a month—to be sure—is shown by these records. What I am coming to is, if that is not shown, that we request of this Commission a proper investigation and apportionment of that proportion as between those two, because with an income of $100.00 a month from a large and expensive power plant it is our contention that a great part of the operating expense is improperly charged to the electric light current, and thus these records are misleading.

And whether that contention is true or not, of course remains to be seen after a proper investigation at the hands of the Commission's experts.

I am unable of course to digest a mass of what are to me complicated tables and figures flashed on us here. I don't know how long this has been in the possession of the gentleman and I don't know what is in any of these tables, and I am not going to be able to find out within the time available here now.

[fol. 158] Commissioner Maullar: Well, you may have, at the close of this hearing, you may have time to inspect the tables and the testimony.

Mr. Higgins: And present our briefs?

Commissioner Maullar: And we will have a continuance for cross-examination after you have familiarized yourself with the details of this exhibit.

Mr. Martin: If the Commission please, in answer to the argument of opposing counsel, I wish to state that the exhibit, with the exception of four pages, has been in the hands not only of opposing counsel but of a great many of the business men in Hillsboro since March last.

Mr. Huggins: Yes, that is correct, but I am not talking about that.

Mr. Martin: And another matter, the question as to the valuation of this property was first heard and determined by the Commission, and no exceptions taken by either party. Mr. White, or, first, Mr. Pierce, the investigating engineer, made his investigation and he reported upon the very question, the ice plant, as found on page 7, and here is a copy of his report that was made early in 1921, April 14th, 1921, in which he says: "From the record of the testimony the impression is given that the ice company is unduly profitable. The fact is that for the past year the profits of the ice company were only a few hundred dollars. From my personal investigation, I believe the apportionments of operating expenses between the electric plant and the ice plant are fair and equitable to both plants."

Now after that report was made, Mr. White, on May 6th, makes a final report as to the valuation of this property, and both sides—[fol. 159] both the City and ourselves, were furnished with a copy of this valuation, and we were given 30 days within which to ask for a rehearing upon the valuation, or appeal from it. Neither party appealed or asked for a rehearing. Thereupon the valuation as fixed for the purpose of rates at Hillsboro became final and effective.

Now I cannot understand by any procedure that I know of in this Commission, where both parties have acquiesced in it and agreed to it and accepted it, how we can go back and investigate it again. But I thought that the inquiries were only for a purpose and were not going very extensively, and therefore I did not object. But it seems to me if we are to go in and re-value this property, that is the basis of that rate; that is the basis of the whole proceeding that follows, and to do that now would be to begin all over again upon a line of procedure that we have all accepted. I think it hardly a proper thing.

Mr. Huggins: We have not accepted it.

Mr. Martin: So that the inquiry as to the value I think is improper. We are concluded by Mr. White's report and our acceptance of it.

By Mr. Huggins:

A. Let me ask you the question in another form. Mr. Madison, do your records show, or has the Commission through its experts ever made any examination to determine the value of a plant for the production of electric current adequate to Hillsboro and used and useful in such manufacture?

A. Well, the original appraisal or valuation of that Hillsboro property at the time it was taken over, I presume, was made for

[fol. 160] that purpose, and referring to Exhibit A-1, pages 9 and 10, the report of Mr. L. G. White, Chief Engineer of The Public Utilities Commission, reading from that report, Mr. White says:

"This Commission did not have in its files data from which we could arrive at the reasonable value of the property used and useful in furnishing electric service at Hillsboro. Therefore, we found it necessary to make an inventory and valuation of that property. This has been done and the summary of the used and useful property as of August 30th, 1920, is as follows:"

Q. Then it is the Ohio Utilities Company's position, and the finding of the expert of this Commission, that a power plant, a large part of which is taken up by the artificial ice, is, as it stands there, used and useful for manufacture of electric current in Hillsboro?

A. I am not in a position to answer that question; I am not an engineer.

Q. That is what Mr. White says according to the words you read?

A. Mr. White's report states that they made this appraisal for the purpose of finding out what property was used and useful.

Q. And that building is no larger than is required and used and useful for the manufacture of electrical current sufficient to satisfy the needs of Hillsboro?

A. I am not in a position to answer that question.

Q. That is what Mr. White says, isn't it? Didn't you just read it?

A. Yes.

Q. That is what the expert of this Commission says, is it?

A. Yes, that is Mr. White's report.

[fol. 161] Q. Exactly so; and this is what you are covering in here, with the single exception of $100.00 rent per month and a power plant used and useful for the manufacture of electricity? (No reply.)

Q. Well, if you don't care to answer that, let me ask you this; do you know whether or not this Commission, as it existed at the time this investigation was ordered, whether this Commission ever directed its experts to ascertain what a building, reasonable for the production of electric current sufficient for Hillsboro, would properly cost?

A. Why, I have no way of knowing what the Commission asked their experts to ascertain.

Q. You have testified to a considerable extent as to what they did. Do you know whether or not they have ever asked for that investigation?

A. I don't know.

Q. Well that is all I want to know. Now, Mr Madison, you say that the last checking by the experts of the Commission of these figures was the latter part of July?

A. As I remember it, yes.

Q. In Exhibit A-1, all of that part of the same containing new matter and your totals are carried as of a date later than the last checking by the experts of the Commission; that is correct, isn't it?

A. Yes, carried as of September 30th, 1922, as taken from the books and records.

Q. Then the new matter contained in Exhibit A-1 has never been checked by any expert of the Commission?

A. Except the figures for six months I think have been previously checked—just one minute, please——

Q. Those are carried into the totals later?

A. Yes, sir.

[fol. 162] Q. So that six months checking would not avail us as to the totals, would it?

A. No.

Q. Now your testimony, Mr. Madison, is entirely from what those books show, isn't it?

A. Yes, sir.

Q. You have no personal information as to the correctness of these figures?

A. Well, they are assumed and presumed to be approximately correct, allowing for ordinary human error.

Q. Assume and presumed by The Ohio Utilities Company?

A. By The Ohio Utilities Company; yes, sir.

Q. Well, I would want your assumption and presumption confined to that company. Have you any records available to you now, Mr. Madison, showing the executive salary totals of The Ohio Utilities Company?

A. No, I have no information before me at this time.

Q. Do you know without reference to any information what that is?

A. Will you make the question a trifle more definite? What executive salaries do you refer to?

Q. I want the salary list of the Columbus office alone, to begin with?

A. It is shown by our books and records in the Columbus office.

Q. My question is, do you know what that is without reference to those books?

A. I might quote a part of those salaries offhand, yes.

Q. Al- right, let us have what you can remember?

A. The salary paid Mr. J. C. Martin, Vice-President, General Manager and Treasurer of The Ohio Utilities Company, by that company, is $6,000.00 per year.

The salary paid Ralph Madison, General Auditor of The Ohio Utilities Company, by that company, is $3,000.00 per year.

[fol. 163] The salary paid to John A. Niles, Auditor of The Ohio Utilities Company, paid by that company, is approximately $2,700.00 per year.

The salary paid Mr. Hickson, Engineer of The Ohio Utilities Company, is approximately $2,700.00 per year.

The salary paid Mr. Wahn, the new Business Manager and Purchasing Agent of The Ohio Utilities Company, is approximately $2,400.00 per year.

Now we have some other office salaries for clerk hire, etc.

Q. Yes; well, I don't mean to inquire into the details except that I thought that was the way you were going to do it to get at the total; can't you tell me the approximate total, Mr. Madison?

A. Just read the figures, please, Mr. Okey?

(Former answer read.)

The Witness: Well, the approximate total salaries paid by The Ohio Utilities Company in their general offices, Columbus, Ohio, including salaries of executives and clerk hire, is some place between $20,000.00 and $24,000.00 per year.

Q. Does the president draw any salary?

A. No.

Q. What is your rental for your Columbus office now?

A. Our total rental, Columbus office, is on the neighborhood of $4,000.00 per year. Now we have some subrental there, but I don't know just what that figures. I suppose our total rental is around—and this is subject to correction—around $3,000 to $3,500.00 a year.

Q. What, if you can tell us, approximately, is the total overhead of your Columbus office, excluding salaries and including rents, less [fol. 164] credits for sub-rent; can you tell us that approximately?

A. The overheads including rent I should say run some place between $7,000.00 and $10,000.00 per year.

Q. Now, Mr. Madison, leaving Columbus and going down to Hillsboro, can you tell us what it costs the company to maintain the up-town office in that village?

A. I could not without referring to our records. Of course I might——

Q. You are aware that the Hillsboro Light & Power Company never had an up-town office, are you?

A. They never had an up-town office until sometime in the year 1917; I think in May, 1917.

Q. And that was after its purchase by The Ohio Utilities Company?

A. Yes, sir.

Q. Can you approximate what it costs for the employes there, the rental and such other expense?

A. Well, without referring to the records—I have forgotten for the present moment just what the rental is there; I think perhaps you know.

Q. No, I do not.

A. Well, I think that—I would say the up-town office of The Ohio Utilities Company, as maintained in Hillsboro, including salaries and overheads, would approximate $300 to $350 per month.

Q. Do you regard the maintenance of that office as necessary?

A. It has been the policy of The Ohio Utilities Company——

Q. I know, but—well, go ahead?

A. To maintain an up-town office for the convenience of the public and we think it is necessary, yes, sir.

[fol. 165] Q. Passing on the expense to the electric light users, of course?

A. I think you will find the expense is apportioned to the gas and electric and the ice manufacturing.

Q. This new manager, Mr. Wahn, what are his duties?

A. Mr. Wahn has been with the Ohio Utilities Company——

Q. What are his duties?

A. He is the new business manager.

Q. New business manager; is that getting new business?

A. He is an appraisal engineer, he is the purchasing agent; he simply has the title New Business Manager, but his duties are very numerous.

Q. Evidently; has he been down at Hillsboro recently?

A. I think he has been there a number of times recently.

Q. Well, I was asking—it is probably taking up time—but I have absolutely failed to see any evidence down there of any attempt to get new business—to increase the business; I was wondering if his activities as new business manager had ever taken him to Hillsboro?

A. To my personal knowledge Mr. Wahn has been there several times during the past month or six weeks.

Q. But in other of his manifold duties than to get new business, I presume?

A. Perhaps so.

Q. Mr. Madison, do you know of any rate higher than 15 cents per kilowatt hour as indicated by your schedules filed, in the state of Ohio?

A. Well, that information is all available here in the records of the Commission. I think perhaps there are some rates higher than 15 cents.

Q. You cannot tell us where they are?

A. I cannot tell you right offhand, no, sir; it all depends upon the [fol. 166] location of the property and the conditions surrounding it.

Q. Do you know of any as high as 15 in a village approximating the size of Hillsboro?

A. Well, I don't know as I do. You might take the case of Jackson, Ohio; I believe they are paying 20 cents a kilowatt for electricity down there under a municipal plant.

Q. What local conditions that you refer to would make that 20 cents an hour, when, for example, Ashland, Ohio, if my information is correct, which can be verified by the Commission's records, is 9 cents for the first 150 kilowatts and 8 cents for the next 150 kilowatts and 6 cents below that?

A. Well, I am not familiar with the Ashland plant property. Of course they might purchase their current from the transmission lines; their operating conditions are perhaps entirely different.

Q. You are purchasing your current in Delaware, aren't you?

A. Yes, sir.

Q. What do you pay for it?

Mr. Martin: I cannot see how that is relevant, as to what we pay for current in Delaware.

Commissioner Maullar: I don't see any objection to that being inserted. While the size of the town don't compare, we can see

that, yet I don't see any objection. We ask the gas people t tell us what they are paying wholesale for the gas. I believe that information, Mr. Martin, should be given. I don't see that it is of very much moment.

Mr. Martin: I cannot see that it affects it except to encumber the record.

[fol. 167] By Mr. Huggins:

Q. Now will you answer the question, please?

A. Read the question.

(Question read.)

A. The current used in Delaware, a large part of it is purchased from the C. D. & M., transmission line. Without referring to the contract with the C. D. & M., I could not answer that question. Perhaps Mr. Hickson or Mr. Niles would remember just what it is. It is based, I think, somewhat upon coal costs.

Q. Mr. Madison, is The Ohio Utilities Company a member of the organization which is scattering propaganda over the state in favor of public utilities?

A. I do not think so.

Q. Do your records show any contributions to an organization for that purpose?

A. Not to my knowledge.

Q. You are acquainted with the records, aren't you?

A. Yes, sir.

Q. You are aware of the fact that two or three times a week propaganda comes out from Cleveland, Ohio, in favor of public utilities advancing rates and all those things?

A. I am aware of that, yes, sir.

Q. Now, will you please tell us, yes or no, or, if you don't know, say so, whether The Ohio Utilities Company, directly or indirectly, pays any part of that expense?

—. So far as I know, The Ohio Utilities Company never has contributed to that.

Q. Then you don't know; is that it?

A. If The Ohio Utilities Company has ever contributed anything to the committee, or whatever it is known as, I don't know it.

[fol. 168] Q. Any contribution made by The Ohio Utilities Company has been so indirectly done, if done at all, that it does not show on the books then?

A. Our books, so far as I know, reflect no contributions or payment of any kind to the committee which I think you refer to at Cleveland.

Q. Is it a committee? What committee is it, Mr. Madison?

A. I think it is known as the Committee on Public Utilities Information; Bureau of Public Utilities Information.

Q. Oh, yes, and is there an organization of utilities of the state of Ohio?

A. Yes, sir, The Ohio Electric Light Association.

Q. Is the Ohio Utilities Company a member of it?

A. Yes, sir.

Q. What does it cost The Ohio Utilities Company per year?

A. I cannot tell you without referring to the records, but I presume $25.00 a year, whatever the membership fee is, or the dues, I think all public utilities companies contribute to that organization.

Q. That shows on your records?

A. Why, yes, whatever we have paid, certainly.

Q. So far as you know, that money or part of it may be used for disseminating that propaganda?

A. Why, that might be a fact. I have no knowledge of that; I don't know anything about it.

Q. I understood you to say as far as you know neither directly or indirectly there was no cost of any kind to The Ohio Utilities Company for that propaganda.

A. So far as I know. I know that The Ohio Utilities Company [fol. 169] is a member, the same as other utilities companies in this state, of the Ohio Electric Light Association.

Q. And so far as you know part of that money may go for this propaganda?

A. So far as I know, yes, but really I don't know anything about it.

Mr. Martin: I object. I think that is hardly competent, what may or may not happen. The witness can hardly testify to that.

Q. Mr. Madison, as you have perhaps discovered—I don't know much about the details of technical bookkeeping, and while it is a very small matter, I want to ask you again; I have tried to find out two or three times; will you turn, please, to page 9 of the exhibit—not Exhibit A-1, but the other exhibit?

A. It is the same page.

Q. Well, all right, turn to page 9 of Exhibit A-1. I direct your attention to the preliminary organization expense of $5,000.00. Do you see that item?

A. Yes, sir.

Q. Now is that $5,000.00 reflected in any way on your eight per cent. income that you have or think you have a right to make and five per cent. depreciation? Does that $5,000.00 appear in any way in arriving at that 13 per cent. which you end up with a deficit here?

A. It has nothing to do with it; no, sir.

Q. That does not appear in any way?

A. No.

Q. What was that organization expense, or what are the items of it?

A. You are referring now to page 9 of Exhibit A-1, a part of the report of L. G. White, chief engineer of the Commission. Mr. White states that this is an inventory and an appraisal of the prop- [fol. 170] erty used and useful in Hillsboro, and he has given actual property values of the tangible property——

Q. Pardon me——

A. And he has added the overheads that are usual in such an inventory and valuation and——

Q. Pardon me, Mr. Madison, my question was, what is that

$5,000.00 made up of? I did not ask for the answer you gave.

A. I have no idea. That is contained in Mr. White's report.

Q. Is it shown on your books?

A. Why, no, I don't know as that particular $5,000.00 is shown any place on our books. These figures are not on our books.

Q. Did you spend $5,000.00 for the organization expense?

A. Why, I don't know; perhaps we did—a great deal more than that; these are Mr. White's figures in the inventory, and Mr. White, I presume, thinks that an amount of $5,000.00 would be a reasonable amount for preliminary organization expenses in getting a going concern out of a property of this size—$5,000.00.

Q. Whether you spend it or not?

(No reply.)

Q. Do you think that $5,000.00 expense of that character ought to have an eight per cent. return income and five per cent. depreciation each year?

A. Yes, sir.

Q. You do?

A. Absolutely.

Q. And Mr. White, the expert, thinks that?

A. I presume he does or he would not put it in his report.

Q. Then he does charge the 13 per cent on that $5,000.00?

A. Well, I will have to go back and——

Q. Well, all I want to know is, yes or no out of that; you don't have to go back, as far as I am concerned.

A. Why, most certainly we are entitled to earn 13 per cent; eight [fol. 171] per cent on the investment and five per cent for depreciation on anything that is a part of the inventory or valuation of this property as determined by the Commission.

Q. And that never decreases; it goes on every year, $5,000.00?

A. Why certainly.

Q. Well, this Commission has held that preliminary organization expense is not chargeable, so that you and Mr. Expert are wrong then, are you?

A. Well, I don't know what the Commission has held, but I presume that Mr. White would not put such an item into his report which he makes to The Public Utilities Commission unless it was a proper item.

Commissioner Maullar: I think you are confused possibly; it is cost of attaching the business that is not permitted or allowed by the Commission.

By Mr. Huggins:

Q. Now, Mr. Madison, is there any inspection of the physical equipment of the Hillsboro division of The Ohio Utilities Company regularly?

A. Why, Mr. Hickson, the electrical and mechanical engineer of The Ohio Utilities Company, makes more or less regular trips to

Hillsboro; I think he is there sometimes three or four or five times a month, and in my opinion I think he is perfectly competent to——

Q. Able man?

A. Able man, yes.

Q. Inspect meters down there, does he, for example?

A. Why, I don't think he personally inspects any consumers' meters; perhaps he orders that work done.

Q. He is responsible for the inspection of meters, is he, and other equipment, physical equipment?

[fol. 172] A. He is directly responsible for the examination of consumers' meters; he is more or less responsible for the examination of the physical property, I think.

Q. I wish you would explain, or, if you cannot, we will ask somebody here of The Ohio Utilities Company that can, how it came about that the village meter was registering 100 per cent. more than the village was receiving for some considerable length of time down there?

A. I am not familiar with that at all.

Q. You know that it is a fact, though, don't you?

A. I think I heard something about some trouble with the meter but that is all I know.

Q. Your duties are clerical, I take it?

A. I am general auditor of The Ohio Utilities Company, yes, sir; I am not an engineer.

Q. Audit bills for electric light bulbs to the village?

A. Mr. Niles, the auditor of The Ohio Utilities Company, I think has that matter; he always handles it; I haven't seen it for several months.

Q. Did you see it during the time when they overcharged the village by not allowing the discount required by the contract?

A. No, I did not see it.

Q. Is Mr. Niles a superior officer in the employ of the company to you, or inferior?

A. No, he is inferior.

Q. Your duty, among other things, is to supervise his work; you did not, however, supervise the presentation of any of those bills?

A. No.

Mr. Huggins: That is all.

NOTATION AS TO EXHIBIT A-1

Exhibit A-1 is same as Exhibit- A, B, C, D, E and F, (see pages 127-147 of Record) attached to application for rehearing dated July [fol. 173] 25, 1921, and in addition 4 sheets of additional facts printed herewith, immediately following.

Statement Gross Earnings and Operating Expenses Electric Department, Hillsboro Division, the Ohio Utilities Company, 11 Months Ended September 30, 1922, Operating under P. U. C. O. No. 3, Effective August 26, 1920

Gross Earnings:		
Res. and com'l lighting	$33,248.46	
Street lighting	3,841.52	
Power	14,491.44	
Rent Ice Co.	1,100.00	
Total Gross Earnings		$52,681.42
Operating Expenses:		
Generating	25,012.47	
Distribution	2,959.92	
General	6,408.58	
Taxes (11 months)	2,787.18	
Total Operating Expenses		$37,168.15
Net Earnings		$15,513.27

(Available to apply against interest on investment 8 per cent and depreciation allowance 5 per cent—yearly—as allowed by The Public Utilities Commission of Ohio.)

Interest on Investment:		
8 per cent on $154,656.00 (11 months)	$11,341.44	
[fol. 174] Depreciation Allowance:		
5 per cent on $154,656.00 (11 months)	7,088.40	
		$18,429.84
Deficit		$2,916.57

(This deficit represents the amount which Electric Department of the Hillsboro Division of The Ohio Utilities Company failed to earn during the 11 months period ended September 30, 1922, but which amount they were entitled to earn.)

[fol. 175] Recapitulation Statement.—Gross Earnings and Operating Expenses Electric Department, Hillsboro Division, the Ohio Utilities Company for 25 Months' Period Starting September 1, 1920, Ending September 30, 1922

Class of service	Gross earnings Sept. 1, 1920, to June 30, 1921, 10 mos., page 13	Gross earnings July 1, 1921, Oct. 31, 1921, 4 mos., page 19	Gross earnings Nov. 1, 1921, to Sept. 30, 1922, 11 mos., page 20a	Gross earnings Sept. 1, 1920, to Sept. 30, 1922, total of 25 mos.
Residence and commercial lighting	$29,300.82	$10,493.66	$33,248.46	$73,042.94
Street lighting	3,649.01	1,663.15	3,841.52	9,153.68
Power	13,904.24	5,090.46	14,491.44	33,486.14
Rent from Ice Company	1,000.00	400.00	1,100.00	2,500.00
Total gross earnings	$47,854.07	$17,647.27	$52,681.42	$118,182.76
Division of expenses	**Operating expenses**	**Operating expenses**	**Operating expenses**	**Operating expenses**
Generating	$24,000.71	$7,673.45	$25,012.47	$56,686.63
Distribution	1,901.95	961.59	2,959.92	5,823.46
General	4,754.27	1,803.74	6,408.58	12,966.59
Total operating and mainteance	$30,656.93	$10,438.78	$34,380.97	$75,476.68
Taxes	2,546.64	1,018.64	2,787.18	6,352.46
Total oper. expen. including taxes	$33,203.57	$11,457.42	$37,168.15	$81,829.14

Recapitulation Statement—*Continued*

Class of service	Gross earnings Sept. 1, 1920, to June 30, 1921, 10 mos., page 13	Gross earnings July 1, 1921, Oct. 31, 1921, 4 mos., page 19	Gross earnings Nov. 1, 1921, to Sept. 30, 1922, 11 mos., page 20a	Gross earnings Sept. 1, 1920, to Sept. 30, 1922, total of 25 mos.
Depreciation allowance on $154,656.00 at 5 per cent per year and for the period taken.....	6,444.00	2,577.60	7,088.40	16,110.00
Return on investment of $154,656.00 at 8 per cent per year and for the period taken.....	10,310.40	4,124.16	11,341.44	25,776.00
Total oper. expen, plus taxes. deprec. and return	$49,957.97	$18,159.18	$55,597.99	$123,715.14
Total gross earn. in the periods taken...	47,854.07	17,647.27	52,681.42	118,182.76
*Deficits in the periods taken.....	*$2,103.90	$511.91	*$2,916.57	*$5,532.38

*(This represents the amounts which the Electric Department of the Hillsboro Division of The Ohio Utilities Company failed to earn during the 25 months period ended September 30, 1922, but which amounts they were entitled to earn.)

[fol. 176] Comparative Coal Cost During the Following Periods (Average Costs per Month Include Freight and Handling)

Month	1920 aver. costs per ton	1921 aver. costs per ton	1922 aver. costs per ton
January	$3.25	$6.82	$4.60
February	6.59	5.34	4.42
March	4.35	4.61	4.38
April	5.02	4.71	4.65
May	6.87	5.06	4.91
June	4.68	4.88	4.89
July	12.87	4.89	6.08
August	10.35	4.82	9.91
September	6.96	4.78	7.95
October	4.68	4.71	....
November	8.01	4.56	....
December	7.52	4.87	....

Statement Gross Earnings and Operating Expenses Gas Department, Hillsboro Division, the Ohio Utilities Company, 11 Months Ended September 30, 1922, Operating under P. U. C. O. No. 2, Effective August 26, 1920

Gross Earnings:	
Gas Sales	$11,356.95
Total Gross Earnings	$11,356.95
Operating Expenses:	
Production	$9,961.12
Distribution	363.62
General	1,615.53
Taxes (11 months' period)	882.75
Total operating expenses	$12,823.02

[fol. 177] Net Earnings:

(Deficit)	$1,466.07

(Available to apply against interest on investments 8 per cent, and depreciation allowance 5 per cent—yearly—as allowed by The Public Utilities Commission of Ohio.)

Interest on Investment and Depreciation Allowance:	
13 per cent on approximately $70,000.00 (11 months)	$8,341.63
Total deficit	$9,807.70

Deficit:

(This deficit represents the amount which the Gas Department of the Hillsboro Division of The Ohio Utilities Company failed to earn during the 11 months' operation ending September 30, 1922, but which amount they were entitled to earn.)

To produce the revenue necessary to make a proper return on the Gas property of The Ohio Utilities Company, Hillsboro, Ohio, after paying all operating expenses for the 11 months' period ending September 30, 1922, would necessitate a flat increase of approximately 86 per cent above the rates now in effect.

(Exhibit "B" is the Transcript of Complete Testimony Taken at Former Hearing Held October 5, 1920. Pages 26 et seq. this record.)

[fol. 178] EXHIBIT C TO MADISON'S TESTIMONY

Copy of Certificate of Valuation and Distribution by the Tax Commission of Ohio

Columbus, Ohio, July 10, 1922.

To the auditor of Highland County, Ohio.

SIR: This is to certify that the Tax Commission of Ohio has fixed the value of the property of The Ohio Utilities Company for taxation for the year 1921, and has apportioned to your county the sum of $202,390.00 distributed between the taxing districts therein as stated below. Upon receipt of this certificate, you are required to place these valuations on the tax list and duplicate and taxes shall be levied and collected thereon in the same manner and at the same rate as other property in the taxing district.

Taxing districts	Value of real estate used in operation	Value of buildings used in operation	*Value of all other property	Grand total of all property used in operation
Hillsboro Corporation	$1,200	$116,920	$84,270	$202,390
Total in county ..	$1,200	$116,920	$84,270	$202,390

Certified copy. W. R. Shank, Auditor, 10/17/22.

Filed with P. U. C. of O., 10/17/22.

NOTE.—The amounts stated in this certificate include the value of all real and personal property owned and leased by the company which is used in operation, but does not include the value of any real property not used in operation and otherwise assessed for taxation, which is certified separately in a schedule of real estate not used in operation.

[fol. 179] *"Value of all other property" includes overhead and underground lines, poles, conduits, lamps and transformers, meters, etc., moneys, credits and investments.

The Tax Commission of Ohio, By F. M. Butler, Secretary.

And also JOHN A. NILES, called on behalf of the Ohio Utilities Company, being first duly sworn, testified as follows:

Examined by Mr. Martin:

Q. Please state your name, residence and occupation.

A. John A. Niles, auditor of the Ohio Utilities Company, 414 Gasco building.

Q. Now, Mr. Niles, as auditor of the Ohio Utilities Company, what are your duties with reference to all bills and accounts that are presented against the company?

A. My duty is to generally supervise the auditing of such accounts and to approve such accounts for payment.

Q. As such, are all of the accounts and the items thereof examined by you and the totals on the bills checked?

A. Practically all, yes, sir, with the exception of times when I am away, but at the time of the disbursement the voucher is approved by myself.

Q. It is your duty to do that or to see that it is done?

A. It is my duty to do that or to see that it is done, yes, sir.

Q. Now, Mr. Niles, I will ask you with reference to the item on page 9 of buildings, to which the opposing counsel called the attention of the Commission, a charge of $28,282.60; do you know of your own personal knowledge whether the electric light building—[fol. 180] power plant building at Hillsboro is occupied and used by any other corporation?

A. Yes, sir, the Hillsboro Ice & Coal Company has a rental facility there for which they pay $1,200.00 per year.

Q. Now have you made any calculation as to the 13 per cent upon the $28,282.00?

A. 13 per cent return upon that valuation as given on buildings, on $28,000.00, would run approximately $3,600.00 per year, for which the Ice & Coal Company stands one-third of that return, or $1,200.00.

Q. Now, Mr. Niles, can you turn to an exhibit showing the cost of general offices, clerk hire, and rents that are charged as against the Hillsboro property?

A. On page 10 of Exhibit A-1—or page 19, I mean, pardon me, page 19, under the recapitulation statement there, for the period of ten months, ended October 31st, 1921, we find the total general officers salaries, $742.60; clerk hire, $1,483.84, and office expenses and supplies $729.95.

Q. Now I will ask you whether or not these three items include all of the charges as against the Hillsboro Division, both for the Columbus office and the Hillsboro office?

A. They do.

Q. And in that item, the salary of the district manager, Mrs. Bennett, is included?

A. Yes, sir.

Q. And the clerk hire in that office?

A. All of the clerk hire.

Q. Also the office rent?

A. The office rent, which is $30.00 per month.

Q. And with reference to books, supplies, stationery and other [fol. 181] equipment?

A. All office supplies and incidental expenses to the running of the office.

Q. And the ten months' period is from actual figures vouchered and charged and paid?

A. As taken from the records of our company, yes, sir.

Q. Now, Mr. Niles, I will ask you with reference to all of the figures that have entered into Exhibit A-1, whether or not you personally checked these figures from the records of the company?

A. I have.

Q. And the figures contained in Exhibit A-1 are correct or incorrect copies of figures—of the identical figures on the bo-ks?

A. They are correct.

Mr. Martin: I think you may cross-examine.

Cross-examination.

By Mr. Huggins:

Q. I understood you, Mr. Niles, from Mr. Martin's question and your answer, that the first three items there of the last section, under the title "General," on page 19 of Exhibit A-1, included all of the expenses of the Hillsboro branch; what is that rent and telephones and the balance of that down there?

A. I was just mentioning the items of salaries of general officers, the clerk hire expense and the office expenses and supplies.

Q. It did not include rent then, the first three items?

A. Oh, no; but that does include the proportionate share as allocated to Hillsboro from the Columbus office. Those three items do include everything which has been apportioned to the Hillsboro division from the Columbus office expense either through salaries, clerk hire or office expenses. Of course they have their own ex- [fol. 182] penses, such as telephones, store room expense and garage and advertising, insurance and miscellaneous general expenses.

Q. Your advertising; didn't I understand you that $30.00 a month——

A. Rent for the office, yes, sir.

Q. Was specifically included in those first three items, in answer to Mr. Martin's question.

A. Are you speaking of the rent of the Hillsboro office?

Q. Yes.

A. Yes, sir, it is included in—no, it is included under rents, under the separate division of rents.

Q. So you would include the fourth item then, wouldn't you?

A. No; the first three items cover everything apportioned from the Columbus office to Hillsboro, but Hillsboro stands for her own individual rentals.

Q. I understand.

A. In Hillsboro.

Q. I understand. I notice for the ten months ending October 31st, 1921, your total advertising expense was $7.90. There is not a very energetic effort for new business down there, is there, Mr. Niles?

A. That is not within my province.

Q. That is not your jurisdiction. These office duties of yours, do they include the inspection of statements for money owed to the Ohio Utilities Company before they go out?

A. Money—do you mean local billings at Hillsboro?

Q. Oh, no; if a company in Hillsboro owes the Ohio Utilities Company money, and a statement is sent to that company, do you inspect that statement before it goes out?

A. Just for what kind of service?

Q. Well for bulbs to the village of Hillsboro, for example?

[fol. 183] A. No; that is wholly within the local manager's jurisdiction.

Q. The failure to allow a discount there is in no wise chargeable to the Columbus office?

A. Absolutely not.

Q. The inspection of meters, is that—and the fact that a meter was rendering 100 per cent overage down there, is that chargeable to the Columbus or the Hillsboro office?

A. I am afraid I could not answer that question, that is more for the engineer to answer.

Q. Now, then, Mr. Niles, how much, if you know, of the power building of the light department of the Hillsboro branch of the Ohio Utilities Company is devoted to the manufacture of ice; physically how much?

A. I believe the engineer would be more competent to answer that question.

Q. Mr. Niles, does the Columbus office in any way inspect or check or approve any statement sent out—any statements due to the Hillsboro branch of the Ohio Utilities Company?

A. Do you mean statements rendered for electrical service, for merchandise sold?

Q. Yes.

A. No, that is all done locally; we have just the general supervision of the controlling of accounts. The billing is wholly with the local manager and the office help there.

Mr. Barrere: And you do not check it?

The Witness: No, sir, not individually; not the individual items; that would be a physical impossibility.

Mr. Huggins: That is all.

[fol. 184] Redirect examination.

By Mr. Martin:

Q. Now, with reference to rentals, I would like for you to state whether or not there is a plot of ground from which the Ohio Utilities Company gets its water supply for boiler purposes?

A. There is.

Q. Do they own that or pay rental?

A. They pay rental on several small tracts of land in Hillsboro and which amounts one lease calls for $100.00 a year and another for something more than that.

Q. The railroad switching privileges are under rental?

A. Yes, sir.

Q. And a vacant lot to the west of the plant?

A. Yes, sir.

Q. And all of those rentals are included in the item of rents?

A. The item of rents included the $30.00 and the rents covering leases or the rent of any ground.

Q. Now, Mr. Niles, some question has been raised about a refund to the city on account of electric light bulbs that were sold to the city. Do you know when your attention was first called to this overcharge?

A. It was called about a month prior to the settlement of that account, or trying to adjust that affair.

Q. And what did you at once, as the auditor, do?

A. We immediately searched our records and requested of the local manager that he submit to us a detailed list of all of the sales and all of the sales of the—both the selling price and the cost price, which was checked by this office, and after which we rendered a statement, making the correction.

[fol. 185] Q. And was the city refunded for——

A. The city was refunded for the full amount.

Mr. Martin: I believe that is all.

Recross-examination.

By Mr. Huggins:

Q. They refunded after the matter had been called to the attention of the local authorities down there by council? That is when they refunded it, wasn't it, Mr. Niles?

A. I am not familiar with that. I don't know who called their attention to it.

And also J. J. HICKSON, called on behalf of The Ohio Utilities Company, being first duly sworn, testified as follows:

Examined by Mr. Martin:

Q. Please state your name, occupation and residence or office address.

A. J. J. Hickson, electrical engineer of The Ohio Utilities Company; office address, 414 Gasco Building, Columbus, Ohio.

Q. Now, Mr. Hickson, some inquiry has been made with reference to the fact that meters on the city lighting system were fast. Can you give us the explanation as to why these meters were running fast and as to the cause, the original cause, and the final correction of that?

A. Preceding my coming with The Ohio Utilities Company some work was begun at Hillsboro with reference to changing the switchboard, and——

Mr. Huggins: I object. If he wants to talk about what preceded his coming, he don't know anything about that.

[fol. 186] Mr. Martin: He does, because the new switchboard is right there on the property and was only completed after he took hold.

Mr. Huggins: All right. Go ahead.

The Witness (continuing): And this work was being carried on and completed about the time I began. During the course of this work meters and transformers were, of course, used to prepare for the measuring of the current furnished to the city. Through accident one of the current transformers became connected in error and was not discovered until sometime afterwards. Immediately upon discovery a General Electric man, a meter specialist out of the Cincinnati office, was called to Hillsboro that we might have a man entirely outside of our organization who could go over the situation and render a report so that it would be entirely unbiased, and——

Mr. Huggins: Well, we don't care for any argument.

The Witness: And from that report the meter—that is, immediately the meter was changed, and the connections, and from that report the adjustment with the city was made.

Q. Mr. Hickson, do you know from inspection of the meters or other information as to the make of that meter installed upon the board in Hillsboro for measuring current for the street lighting?

A. It is a General Electric meter, one commonly used and of good repute.

Q. Do you know from the records, either on file in the Columbus office or used at the time of the inspection of this meter, as to whether or not the General Electric Company furnished a blue-print or dia-

[fol. 187] gram showing the connection of this identical meter?

A. I have no knowledge on that subject.

Q. Do you know whether or not this meter was a new meter with

new current transformers or was it an old meter that had been in use prior to that, to the installation there?

A. I have no definite knowledge on that item. I would say that the appearance is the meter is absolutely new.

Q. Now the transformers that you referred to are the small current transformers that are installed on the back of the board for the purpose of regulating the measurement and the mechanical and electrical equipment of the meter, are they not?

A. Yes, sir.

Q. And a reverse connection will cause that meter to register wrong?

A. A reverse connection would cause it to register in error.

Q. Now, some inquiry has been made, Mr. Hickson, with reference to your visits to Hillsboro. Can you advise the Commission as to the approximate number of visits you make there in the course of a month or three months?

A. We have not been in the habit of making periodical trips, such as once a week or once a month; we have gone there when occasion required to go over certain work and for performing certain work; we have finished that work and have returned.

Q. Also inquiry has been made as to whether or not the company has rendered any assistance to customers or has solicited or endeavored to secure new business; what can you say as to your activities along that line?

A. The company has endeavored to render all possible assistance [fol. 188] to customers in their present installations, to enable them to get the best use from their electric service. We have taken steps to help them to change at times, I mean to advise changes that would help them in their service. Those are items that we gladly do in order to facilitate the customers' use of electric service.

Q. Do you recall any particular instance, of mills or large users, that have received your service?

A. I recall in particular the plant which Mr. Gross is connected with and which we spent time in to go over the installation in detail, and which firm was given a report on our findings.

I further remember another place where we went in the basement to go over some work. That was a mill over close to the electric plant called the Whistler mill, I believe, and for which certain recommendations were made. When we entered that basement it was in very bad shape. The line shafts were running without oil on the bearings. The fact is some of the bearing boxes had the caps off and were running absolutely dry. It was only very evident that we could be of some help to get them to oil their bearings in order that they might have better electric service.

Q. How was the mill as to being over-motorized?

A. The mill at that time was over-motorized.

Q. Has the company done anything with reference to aid there?

A. A much smaller motor has been ordered and is being shipped from the General Electric Company as an item to help this particular customer, to get the use of his smaller motor for his smaller service.

[fol. 179] Q. Do you recall any other instance, a picture show or other mills or any place like that where assistance was furnished?

A. There is another case where we were called to a show and after going over the installation made certain recommendations to the advantage of the operator of the show.

Q. Do you know of any instance where a request has come to you for assistance that it has not been rendered?

A. I do not know of any instance where any request has come or even been mentioned but what we have been on the job to help them out.

Cross-examination.

By Mr. Huggins:

Q. Do you know of any instance where, without any request, you made any effort to improve the service to customers?

A. I remember distinctly of being in the mill located—I cannot give the name of the mill, but it is located about a block and a half from the plant, where we went without solicitation to look over the installation to see if we might be of some service to them. It is located on the new improved street on the way to the depot. Now you can give me the name of the mill probably.

Q. What type of mill?

A. Flour mill.

Q. The Huggins mill——

Mr. Barrere: The Middle State?

The Witness: I think it is called the Middle State, yes.

By Mr. Huggins:

Q. Now, Mr. Hickson, the new meter to measure the village cur-[fol. 190] rent was installed after your connection with the company, was it?

A. I said the work was begun before and was being carried on as I came to the roperty. Now whether it was actually connected before or after I could not answer that; I don't know.

Q. Well, at least it was finished very shortly after you became connected with the company?

A. Well, the times were somewhat similar.

Q. Well, do you know or do you not know, with reference to your connection with the company, when that meter was installed?

A. I don't know what time that meter was connected.

Q. Well, all right then; let it go at that. You knew that a new meter had been installed, did you—comparatively new when you became connected with the company, or was being installed?

A. I said that I had no definite knowledge of whether it was a new meter or not, but from appearance it appeared to be a new meter.

Q. Well, did you ever test it?

A. That meter was worked on by the G. E. man, Mr. Stoose, from the Cincinnati office; he tested the meter.

Q. I am not talking about after council discovered it was running 100 per cent over; I am talking about after it was installed?

A. No, sir, I had not been on that meter until called there, and went there with Mr. Stoose to examine the meter.

Q. After council had refused to pay the overage bills?

A. I know nothing about council refusing to pay the overage bills.

Q. How did you come to go down there about that meter?

[fol. 191] A. Whether it was a telephone request or written request, I could not say; I went upon orders of Mr. Martin. I will say this, we were sorry that happened; it was not by intention or design. It was an accident and were only glad to immediately get on the job and make it right.

Q. How long did it go on before it was called to your attention, do you know?

A. Immediately upon receipt of any of the word we got on it immediately, as quick as we could get in touch with Cincinnati and get the Cincinnati man to go there.

Q. Now that is not my question. I asked you how long that meter was running approximately 100 percent over before it was called to the attention of The Ohio Utilities Company?

A. That I could not answer.

Q. You made no inspection whatever of the new equipment down there, whether the village was being dealt fairly by, until you were ordered to go down there and see about that meter by Mr. Martin; is that correct?

A. I did not make any inspection until at that time.

Q. And nobody else as far as you know?

A. Not that I know of.

Q. You were content with the good repute of the meter, were you, that you have testified to?

A. The meter was from a standard manufacture and which we were using lots of meters from and we took it for granted the meter was right until we found it was wrong.

Q. The fact that the bills were twice as large as they had been to the village did not cause any inquiry upon your part?

A. Well, I have no knowledge with reference to the bills at all.

[fol. 192] Q. You don't know as a matter of fact that they were twice as large, do you?

A. No, sir, I had no knowledge of the bills whatever.

Afternoon Session, Tuesday, October 17, 1922

And also CHARLES P. WAHN, called on behalf of The Ohio Utilities Company, being first duly sworn, testified as follows:

Examined by Mr. Martin:

Q. Mr. Wahn, please state your name, occupation and business address.

A. Charles P. Wahn, New Business Manager, The Ohio Utilities Company, Columbus, Ohio.

Q. I wish, Mr. Wahn, you would please state your duties as New Business Manager, and particularly with reference to the Hillsboro Division of The Ohio Utilities Company.

A. They consist in visiting possible customers; that is the main line; as that becomes slack we have other things, other duties to perform, which are particularly designated. Also assist in purchasing, or collating prices so that apparatus and material may be purchased.

Q. What have you to say with reference to your duties as to the equipment and sales department of The Utilities Company?

A. With reference to Hillsboro?

Q. Yes.

A. The equipment?

Q. Yes, the sales department, apparatus, appliances?

A. Well, we purchase all those, and on request from the local office they are sent to them for sale, such as irons and toasters, and washers and all other appliances, both gas and electric, that may be used on the property.

[fol. 193] Q. Who investigates the adaptability of these various appliances and the salability of them?

A. I do.

Q. Now what can you tell us with reference to the activities at Hillsboro?

A. I don't know of a single house or possible customer there that has not been visited at some time or other with the idea of getting him to use either electric light or power; I don't mean by that residences, but I mean factories.

Q. What can you say about your work with the Board of Public Affairs on the city pumping?

A. That has been very extensive and has taken a great deal of time.

Q. And what other factories, and what have you done with reference to securing data and information—probable costs, etc?

A. We have secured probable costs and data for a number of properties, among others the Guyler Furniture Company, the Whistler Veneer Mill, the Whistler Feed Mill, the Overall factory, and places of a similar nature.

Q. Have you had anything to do with the business that purchases and sells poultry and eggs?

A. The Rhoads Chickery is about to come on with us.

Q. Now with reference to the checking of material required for renewals or replacements or new work, do you have anything to do with that?

A. It is customary, when any work is to be done, that may require extensions or renewals, for that to be done by me. I go around and visit where the lines are running, note their condition and recommend their continuance or change.

Q. Have you done any of that class of work in Hillsboro?

A. Yes, sir.

[fol. 194] Q. How extensively, Mr. Wahn?

A. Why, it took roughly two weeks, I should judge, to make a fairly thorough examination of the entire property with respect to its lines.

Q. And have you made your report on that yet?

A. No, sir, not complete.

Q. Now with reference to coal purchases, in whose hands is that business, or whose department does that come under?

A. Mine.

Q. For all the properties?

A. Yes, sir.

Cross-examination.

By Mr. Huggins:

Q. How many factories in Hillsboro have you visited approximately, Mr. Wahn?

A. Well, it would be rather hard to say. It has been going on now for five years.

Q. Well, you ought to have called on a great number in that time?

A. I think so, and some of them a great many times.

Q. About how many different factories using electric current for power would you estimate you have called on in the five years?

A. I don't know of any that I have not, offhand.

Q. How many, I am asking—how many approximately?

A. Well, I don't know how many there are there. I should judge—with particular reference to factories and mills, there are probably eight or ten.

Mr. Huggins: That will be all.

Mr. Martin: Now we have sent to the Tax Commission for a certified copy of our tax valuation for the year as fixed by the tax [fol. 195] commission, which I will say is in excess of $202,000.00. That is the valuation that the tax commission, after a hearing, has placed upon this property, and we want to introduce that in the record as Exhibit "C" when it arrives.

Commissioner Maullar: All right.

Mr. Martin: I believe that is all then.

Mr. Barrere: We would like to have Mr. Wahn recalled for a minute.

Q. Mr. Wahn, in the statement here on page 16, the memorandum there at the bottom: "And taking results of above figures into consideration, and from our knowledge of coal market conditions, we are of the opinion total fuel costs for the period of one year ending July 1st, 1922, will be as high as for yearly period ended December 31st, 1920, or approximately $21,000.00". How correct is that estimate?

A. That estimate is a little high.

Q. That estimate is high?

A. Yes, sir.

Q. How much?

A. Oh, I should judge—it is rather hard to calculate offhand, but I should judge 12 to 15 per cent, maybe a little more than that.

Redirect examination.

By Mr. Martin:

Q. Now, Mr. Wahn, is there an exhibit showing the comparative coal costs for the years 1920, 1921 and 1922 for the past months, on page 20-c, I believe it is?
A. Yes, sir.
Q. Now your estimate of $21,000.00 is based on the current year of 1922?
A. Yes, sir.
Q. And you have three months of that year that are not included?
A. Yes, sir.
[fol. 196] Q. And in your estimate it is running high?
A. Yes, sir.
Q. I wish you would turn to page 20-c and say to the Commission what is and has been the trend of prices on coal.
A. As late as this morning we were notified of a slight increase of the price of the coal we have been regularly purchasing.
Q. Well, you have not answered my question; what has been the trend of the prices for 1922 as shown by this Exhibit?
A. Upward.
Q. And from your information for the months of October, November and December, what will be the trend?
A. There are so many conditions entering into it that it is rather hard to determine or even to say, with any degree of certainty. My judgment would be that they will not be lower.
Q. And if not lower, then your percentage of decrease over $21,000.00 is high or low?
A. The percentage decrease in that event, continuing out through the full year, the percentage decrease will be less than what I estimate it.

Mr. Martin: I believe that is all.

Recross-examination.

By Mr. Barrere:

Q. The period about which I asked you and for which the estimate has been made has expired, has it not?
A. Yes, sir.
Q. And your judgment upon the cost of coal in the future is no better now than at the time this estimate was made?
A. Why, possibly not.
[fol. 197] Q. Mr. Wahn, in your judgment are the present high prices comparatively temporary?
A. Why, he who runs may read; the conditions are such that no

one can tell definitely; you know as much about the condition of the coal market from the daily papers as anybody else.

Q. I am simply asking you for your judgment. That was what was given in the first place, upon which the Commission was requested to grant a rate, and I am asking for judgment again.

A. My judgment is that we will not have any change in prices until this rate scale is fixed again in March, 1923. The men are working on the same old scale as they were before.

Mr. Barrere: That is all.

Mr. Martin: I believe that is all. Here is the tax return to which I referred, Company's Exhibit "C," which we now formally introduce as evidence.

And thereupon the document last above referred to is admitted in evidence on behalf of The Ohio Utilities Company and is herewith submitted and marked, Company Exhibit "C."

L. G. WHITE, called as a witness, being first duly sworn, testified as follows:

Examined by Mr. Huggins:

Q. Your name is L. G. White and you are Chief Engineer in the employ of The Public Utilities Commission?

A. Yes, sir.

Q. How long have you been serving in that capacity, Mr. White?

A. Since May 2nd, 1911.

[fol. 198] Q. Have you made a personal inspection and appraisal of the Hillsboro branch of The Ohio Utilities Company?

A. No, sir.

Q. How?

A. No, sir.

Q. That was made by Mr. T. D. Pierce?

A. Yes, sir.

Q. Is he here?

A. No, sir.

Q. I thought you had done that personally. Well, Mr. White, will you please tell us, if you can, how the item of $5,000.00 for preliminary organization expense came to be inserted in the report signed by you, dated May 6th, 1921, as shown on page 9 of Exhibit A-1?

A. The account system as prescribed by this Commission in its Administrative Order, No. 22, provides, among other classifications of expense, on page 74 of that Order, item No. 511, styled "Organization," and that account takes care of or provides for fees paid to the government for the privilege of incorporation and all other fees and expenditures incident to the organizing of electric utilities, placing it in readiness to do business. This includes the cost of preparing and distributing prospectus, cost of soliciting subscribers for

stock; cash fees paid to promoters and the actual cash value at the time of organization, and securities paid to promoters for their service in organizing the enterprise; attorney fees, cost of preparing and issuing certificates of stock, cost of procuring authority from The Public Utilities Commission, and other similar expenses; expenses incident to an increase in the capital stock and negotiations for the sale of stock and the expense of preparing and filing certificates for maintenance articles of incorporation.

[fol. 199] That is all of the items under that heading.

Mr. Huggins: Now will you read my question to him, please, Mr. Okey?

(Question read.)

A. That item is an estimate of the Commission's engineer who made the investigation on the ground.

Q. That is Mr. Pierce?

A. Yes, sir.

Q. You don't know how he came to make it?

A. Well, I don't know the detail of it, no; I don't know just what his investigation was.

Q. You don't know whether or not the company spent a single cent under that item then, do you?

A. Well, I could not tell you how many cents, no.

Q. Well, as far as you know, they did not spend anything for that item?

A. Personally, I do not know.

Q. Exactly. Now, Mr. White, this $5,000.00 in your figures here, please tell us whether or not you have allowed a five per cent depreciation and an eight per cent income on that $5,000.00 expended?

A. That item would not depreciate and it would be included in the return; that is, in the amount upon which a return is allowed.

Q. They are allowed eight per cent every year on that expenditure of that $5,000.00?

A. Yes, sir.

Q. Whether they did it or not?

A. Yes, sir.

Q. Exactly. Now are they not, as a matter of fact, in your figures here, also allowed a five per cent depreciation there?

A. No, that item is not depreciated.

Q. I know, but hasn't it been allowed on these figures?

A. I think not.

[fol. 200] Q. I wish you would tell us, please.

A. Well, we don't allow depreciation on property that does not depreciate. For instance, land is excluded and the intangibles are excluded.

Q. The services, you see three or four or five items above that?

A. Yes, sir.

Q. That of course is exclusive of such services as are incurred in the preliminary organization expense?

A. Those are physical services.

Q. Oh, yes, I see.
A. Wire and pole.
Q. Oh, yes, I understand.
A. Physical property.
Q. Now, Mr. White, on the same page, the first item you see tabulated, this building item, does that include both buildings and land?
A. That is buildings.
Q. Five per cent depreciation is allowed on buildings, is it?
A. Well, I could not tell you just what that figures out. The amount is there. The amount of depreciation is $1,573.83.
Q. Their investment in land then does not appear here?
A. No, there is no land here.
Q. Can you explain that to us?
A. I did not make the investigation so I do not know whether they own the land or whether it is rented.
Q. You are an electrical expert, are you, Mr. White?
A. I am chief engineer.
Q. Are you acquainted with the size of Hillsboro, are you, and, from a study of these figures, about what the electrical requirements in the village of Hillsboro are?
A. No, I am not. The size of the village is not an indication.
[fol. 201] Q. No, not exactly. It depends on the amount of industry, etc. Well, any way, can you tell us about what would be the cost—reproduction cost of a power plant sufficient for Hillsboro's needs in view of Mr. Pierce's figures?
A. No, not now.
Q. Wouldn't you regard $28,282.00 as very excessive?
A. Inasmuch as that is the depreciated value I should say no; the cost new now would probably be very much in excess of that.
Q. That would be just about fair, would you think, for a power plant—electric power plant for a village the size of Hillsboro?
A. That depends a good deal upon the power plant. The size of the town doesn't have anything at all to do with the apparatus and building that may be erected for use as a power plant.
Q. Well, you have made a study of the balance of this equipment here which is set forth in Mr. Pierce's report, have you, Mr. White?
A. Made a study of the equipment?
Q. This report of Mr. Pierce's that you have evidently very carefully considered?
A. I have it before me.
Q. Well, would you regard a power plant costing that much as about right?
A. There is nothing but a summary here. There is nothing here to indicate the reason for such a price at all.
Q. You are not able to say whether that price is reasonable or not, then, are you?
A. I am not, no.
Q. Is there anybody in the employ of the Commission that is?
A. Why, Mr. Pierce has the detail of this. This is only a summary, you know.

[fol. 202] Q. Are you able to tell us about how much a reasonable power plant for Hillsboro would cost, if they did not have an ice manufacturing plant in it also?

A. No, I cannot tell you what a power plant would cost unless I saw an inventory of it and an opportunity to price it out.

Q. No, I don't mean that particular one; I mean if you were going down there now to construct a power plant sufficient to produce the electricity required by the community of Hillsboro?

A. No, sir; I could not. If I was going to build a plant there myself I could not in five minutes' time make an estimate of it—an estimate of the cost of it.

Q. Well, I don't think that, in view of this report that you made, that you spent as little as five minutes' time on it.

A. You are asking me to make an estimate now. You are not asking me as to how this estimate was made or how long it took to make it.

Q. Do you know whether Mr. Pierce made any such investigation or not?

A. He did.

Q. I mean——

A. In every detail.

Q. I mean did he make any investigation of what the cost of a power plant would be, exclusive of an electric manufacturing or an artificial ice manufacturing plant, I mean?

A. Well, that is what this inventory purports to be, the cost to reproduce new an electric light plant.

Q. Yes, but the point is that there is a great part of that taken up by the manufacture of artificial ice?

A. There is no—— .

Q. And what I am trying to get at is what would a power plant [fol. 203] for electricity alone, reasonably adequate for Hillsboro's needs cost?

A. I could not tell you that offhand. I don't think anybody can without some sort of specification.

Q. You don't know whether Mr. Pierce investigated that or not, do you?

A. I don't think he made an investigation of what some other plant would cost, no.

Q. Or whether the Commission requested such an estimate?

A. No, the question was, what is the value of the plant that is there and in use, used and useful in the service of the public——

Q. Used and useful in the service of electricity?

A. Yes.

Q. Now that would, in my judgment, exclude a building part of which was devoted to the manufacture of artificial ice?

A. If the building was jointly used for any other purpose, they would take it for granted that the part used for other than electric light service was excluded.

Q. Oh, then this item of $28,000.00 is only for the electric light producing part of the building?

A. Is only that which is used and useful in furnishing electric light and power service.

Mr. Huggins: Then, gentlemen, your credit of rent for the ice plant is wrong?

Mr. Martin: Well, it is to your advantage; it is in your favor.

Mr. Huggins: The point is that Mr. White is wrong. That is the whole building.

Mr. Martin: He is your witness.

Chairman Poor: Where is Mr. Pierce, Mr. White?

[fol. 204] The Witness: I don't know. He wasn't in the office when I came down here.

Chairman Poor: Is he in town?

The Witness: Oh, yes, I think so.

By Mr. Huggins:

Q. You have down here, Mr. White, in your report—if you will notice there about the middle of the tabulation part of it, page 9, you have interest at six per cent. for one year, $4,507.98; do you see that? Are they entitled to 13 per cent. on that?

A. Let me have that question, please?

(Question read.)

A. You ask if they are entitled to 13 per cent. on that?

Q. Yes?

A. I don't understand your question.

Commissioner Mauller: That is five per cent. depreciation and eight per cent. income?

The Witness: Yes.

Mr. Barrere: That interest depreciates, does it, five per cent. per year?

The Witness: No, it does not.

Mr. Barrere: But still they are entitled to five per cent. depreciation on that?

Chairman Poor: The Commission never allows any depreciation on that item.

The Witness: That is not depreciation.

Chairman Poor: The only items that are depreciated are those items that are above intangibles and overheads; isn't that right, Mr. White?

The Witness: Yes, sir.

Mr. Barrere: Now, if the Commission please, the entire basis of this report which is submitted here, and the entire basis on which [fol. 205] this return is asked by The Ohio Utilities Company is based upon this,—included upon a 13 per cent. basis; every figure they have presented in Exhibit A-1 is based upon including this $5,000.00 of intangibles and overheads, $4,507.98 and $1,071.00—all of that is included in their application.

Chairman Poor: Mr. Barrere, the Commission does not allow

depreciation on anything below that line of intangibles and overheads.

Mr. Barrere: But I am calling your attention——

Chairman Poor: It is only on the physical property.

Mr. Barrere: I am calling your attention to the fact, because of the fact that all their figures here which are presented in exhibit A-1 by the applicant for this increase, are based upon these figures, including the 13 per cent. proposition.

Chairman Poor: They may be asking it, but for your information you need not waste any time on it. The Commission does not allow depreciation on these items.

Mr. Martin: If the Commission please, it amounts to but little because the interest on those items amounts to $1,800 a year, while our shortage on earnings for eleven months was $2,916.57.

Chairman Poor: Irrespective of whether it is a great amount or a little amount, the question of the principle of the thing, whether it should be allowed or not, is the question, and this Commission does not allow depreciation on those items.

Mr. Huggins: That will be all for Mr. White.

Mr. Martin: We have no questions.

No cross-examination.

[fol. 206] And also J. C. Martin, called for purposes of cross-examination, being first duly sworn, testified as follows:

Cross-examined by Mr. Huggins.

Q. Mr. Martin, what did The Ohio Utilities Company pay for the Hillsboro Branch?

A. They paid approximately $170,000.00.

Q. Cash?

A. Cash.

Q. Gas and light?

A. Wait a minute; that is, the purchasing company, P. W. Brooks Company, of New York, bought it for Mr. Beecher, through Mr. Beecher's brother in New York for $164,000.00, is my recollection: of course I am giving these figures after a number of years. I was at that time attorney for that company, but not in any way interested in the proposition. The matter hung fire for sometime, and in the meantime Mr. Beecher made certain improvements and changes and some additions and the price was approximately $170,000.00. Now I may be wrong there a few thousand dollars, but it is between $164,000.00 and $170,000.00 in cash.

Q. That included the light plant?

A. That included the light plant and gas.

Q. And the ice plant?

A. And the ice plant, which was estimated at $10,000.00.

Q. And it was for a property valued for taxation at $30,000.00?

A. It was for the property returned by Mr. Beecher at $30,000.00,

but never returned after that by The Ohio Utilities Company, of which I was treasurer, at any $30,000.00.

[fol. 207] Q. Well it was returned for $117,000.00 the next year?

A. Yes, sir, and this year $202,000.00 plus, and our return this year does not include the ice plant; it is separate.

Q. Have you made any additional capital investments other than leaving into the business what it earned since that purchase?

A. Yes, sir.

Q. How much?

A. I cannot give you the amount of it but we have made quite a large additional investment and these have from time to time been returned to the Commission and they have checked the same and added it to our capital account. We have installed two new Sterling boilers; we have installed a new switch-board alone costing us in excess of $6,500.00.

Q. About how much——

A. And quite a number of changes in the gas plant and some extensions in the light plant.

Q. About how much additional to the approximately $170,000.00 that you paid cash money?

A. Well, now, handling something like two million dollars worth of property and making additions on that, it would be pretty hard for me to carry that figure in my mind, especially as I don't keep the books. My estimate would be something like $30,000.00 to $50,000.00 has been spent in Hillsboro, but I may be wrong, because it is only an estimate.

Q. Mr. Martin, I did not make myself clear. I am talking about the light plant; how much on the light plant and light equipment?

A. My figure would be only an estimate. The Commission's record show accurately the amount and I would prefer to refer you to their records on the question of capitalization.

[fol. 208] Mr. Huggins: Well, the Commission takes judicial notice, as it were, of its own records and I assume we do not need to spend time on that now and can leave that investigation to the Commission on its consideration of the case?

Commissioner Maullar: That is right.

By Mr. Huggins:

Q. Now this additional equipment, is not that taken care of by your depreciation charge?

A. The question again, please?

(Question read.)

A. No, sir, the Commission have adopted this rule; when we replace equipment such as the three small inferior boilers that we had in the plant at Hillsboro with two large Sterling boilers, they check our appraisal, which is on file here, under which we obtain our first capital account, and they charge off as against that new installation the price at which this old equipment was capitalized originally. So,

that they take out of our appraisal and our inventory the actual figure of the valuation of the old property at the time we bought it, and only permit us to capitalize the difference between the cost of the new over the original capitalization of the old, so that if the old capitalization was high then the new capitalization is reduced from its actual cost by the high capitalization of the old, and there is an inventory and appraisal on file with the Commission of that original capitalization, with the actual investment of each and every item that entered into it.

Q. Mr. Martin, we had some conversation this morning, or some testimony this morning, about the inspection of your physical equip- [fol. 209] ment down there. We are at a loss to understand how for some several months the meter registerering the use of electrical current by the village should have been allowed to stay in a 100 per cent. overage condition. Our explanation so far don't suit us. Let us hear from you on this?

A. Well, the reports of the various divisions of a utility reach my desk about the 20th of the month for the preceding month. I then make an examination and analysis of them and shortly after the change in the charge for street lighting, I think it was the first month, probably 30 days after the reading of the meter, I noticed the discrepency, and I called our district manager, Mrs. Bennett, about the matter and she said that she would make an investigation. I asked if the meter had been overread; it is possible in reading a meter that the pointer may be very near the next figure, but not to it, and they would read the next highest figure, which would just double it, in place of reading back to the figure which it had passed. Then the second month came in and it was the same way. We did not collect. If you will turn to your records I think you will find we did not collect for the month as soon as we discovered that there was probably some error, and it remained uncollected until we could have the matter investigated; the meter was a new meter; the current transformers that go with the meter were new equipment, new transformers, and we at once called upon the expert of the General Electric Company, from whom we bought the switchboard and all the meters, and who guaranteed perfect performance of it, to make an investigation and report to us. They made an examination and [fol. 210] when they reported the percentage fast, we credited the City with the overcharge and only collected that which was due us.

Q. The bills were held up for months by the City Council before you took any action?

A. We did not ask the City Council for payment of them after we discovered the discrepency until we righted it and then we did ask them for it.

Q. Were the bills presented?

A. I think our local manager presented the bills each month.

Q. Isn't that asking for payment? I so consider it when I get one.

A. Well, the street lighting for municipalities, quite frequently that does not amount to a request for payment because we do not ask for it until they have the money in the treasury to pay; that has

occurred a time or two with your city. Now the bills were rendered according to the meter and in the meantime we were making an investigation as to the condition of the meter. If our old meter had been wrong and we had only been collecting half of what was due us from the City we wished to know it because this was a new meter with new transformers and a complete new measuring devise. If, on the other hand, the meter was running fast we wanted to know it and so we awaited the determination as to the accuracy of the meter. The bills of course went in. They would naturally be presented by our district manager down there each month because we were carrying on the investigation from the Columbus office, and not she, as to the correctness of this meter.

Q. She was not notified of anything of the kind going on then?

A. I don't know as to that; I could not say.

[fol. 211] Q. The correction was not made until Council refused to pay the bills; isn't that right?

A. No, sir, the investigation was ordered——

Q. The correction?

A. The correction was not made until we had a report from the General Electric Company and within a very few days after their report the correction was made and the proper bills rendered.

Q. And settlement asked for?

A. I don't think we had a settlement until some time after that.

Q. Now is the manager down there acquainted with the contract with the village for the lighting and furnishing of supplies, etc.?

A. She should be; there is a copy of it there.

Q. Well, this overcharge for electric light bulbs to the village, is there no inspection of any character down there as to your equipment or your statements for money due you or anything?

A. Yes, there is an inspection, but the sale of lamp bulbs to the City or any of the customers is a matter that, taking the whole organization, would be a small part. Yet it should have the same attention as any large part. Now our lamp bulbs were originally bought by a straight purchase. The Edison Lamp Company adopted a policy of selling upon commission only, or establishing an agency in a town and then selling through that agency. We signed an agency contract instead of a purchase contract and their schedule of prices was furnished with this agency contract. Now whether Mrs. Bennett received the discount sheet on that agency contract or not I am not certain. She advised me at this time this difficulty [fol. 212] arose, which by the way, we were informed *me* by Mr. Smith of your city long prior to hearing from the Council in regard to it. She said that she did not have that discount sheet. We were uncertain whether she had it or not, but so soon as we were informed by Mr. Smith we called Mrs. Bennett and asked her to send us all of the bills for lamps furnished by this company to the City of Hillsboro. On receiving the list with prices we began checking up the different schedules because there had been some two or three changes in the schedule in the meantime, and on the next call at Hillsboro I called upon Mr. Kerns, the Chairman of the Light Committee of the Council, and told him what we were doing, and he said some one

had been instructed to write us regarding the matter, I forget now who, I think the City Solicitor. And I told him as soon as this matter was checked we would make a credit and send them a check for the overcharge, which we did. I did not know that there was any feeling on the part of any Councilman or anybody else about it because we endeavored to treat the village fairly.

Q. How long had the statements been made or been rendered by your local manager in Hillsboro erroneously for these supplies?

A. I don't know, only this, our attention was called to the fact that there was a claim for a certain period, but when we examined the records we found that the overcharge was made for a longer period than claimed by the City, so we travelled back over our records to the first overcharge that appeared, according to the discount sheets on file with our company, and then gave the city the benefit of the correction.

[fol. 213] Q. Well, how long was it after Mr. Smith—was that Mr. Irvine Smith?

A. Mr. Irvine Smith.

Q. How long was it after he had notified you before this correction was made?

A. I called Mrs. Bennett the same day over the phone and told her to make up those schedules for the entire period that this property had been owned by the Ohio Utilities Company, and send them to us; so as soon as those were received in the office, why I directed my office force to get the sheets and work up the schedule. Of course there were other matters going through at the same time. It was worked out at intervals when the force could look after it, and I suppose her work was done in the same way. But just as soon as — before we had it worked up we conferred with Mr. Kearns.

Q. There had been no audit or checking of any character at all until word came from the village, had there?

A. That item in all probability would not be checked for this reason; the Edison Lamp Works checks as against the storage stock and checks as against the income from the lamps. Our profit is a percentage of profit on the sales; we gave the City of Hillsboro, the percentage of profit that is allowed to us. In other words, while the price of the lamps was according to a schedule that we were bound to sell them at, we gave you the benefit of the discount on these schedules.

Q. Well, this discount was given to the village because your contract with the village called for it?

A. Certainly, but the discount——

Q. What is the arrangement that you claim to have with them?

A. The discounts that they give us on this consignment are that [fol. 214] we bind ourselves to sell at the prices that they name in their contract with us, and she had charged you according to those prices. Now in the adjustment we gave you the actual cost to us. In other words, we gave you the benefit of the discounts, but it was purely a business transaction. I don't think the Council ever accused us of trying to be dishonest with them about it; at least I never heard anything of the kind.

Q. There was no statement then, as I understand you, Mr. Martin, from the Ohio Utilities Company conceding the correctness of the complaint of the failure to allow discounts until the refusal of Council to pay the bills?

A. Why, we were working on it long before they refused to pay the bills.

Q. Yes, but——

A. We did not ask them to pay our bills, although they were rendered when we presented the matter, if you have reference to the overcharge on the meter; there was no demand for the payment of them until that could be worked out. On the question of the lamps the city was owing us far more money than the credit on the lamps amounted to.

Q. But during all of this investigation—which I cannot see how it would take so long—but notwithstanding, during all the investigation, the statements not allowing discounts and a large overcharge for current furnished the city, the statements for those went right ahead.

A. They were different periods, but——

Q. Exactly so, but they went right ahead.

A. Certainly they went right ahead because the district manager had to make some charge on her monthly report. Now, she could [fol. 215] not make a charge on her monthly report except as shown by our sales of current and lamps, and she had no right to make an adjustment such as this adjustment would be with the city. It must go through the Columbus office, and we would only make the adjustment after an investigation to find whether we were right or wrong. If we were wrong we could make an adjustment and if right, we would stand by our records.

Q. And no advice whatever to the city as to any action which you say was being taken by The Ohio Utilities Company?

A. Why, yes, there was advice with reference to the lamp matter. I am not certain as to the advice with reference to the meter because the meter was taken up separately. If my recollection serves me right, we did advise someone there that the meter was being investigated and I think if I recall rightly that someone there asked to be present at the time the General Electric Company's man came there and investigated the matter.

Mr. Barrere: The advice in regard to the lamps before council had made a complaint?

The witness: The advice with reference to the lamps was made on the day when we called in Hillsboro on Mr. Kerns, Chairman of the light committee.

Mr. Barrere: Was it before the council had made the complaint; that is the answer I want, yes or no.

The Witness: I will give it to you this way. Mr. Smith first informed us—and where he got the information I don't know—but we at once started an inquiry. On the day we were in Hillsboro we called on your city solicitor and he was out of the city. We then [fol. 216] called on Mr. Kerns and later we saw the city solicitor on the street and told him what we were doing.

Mr. Barrere: You cannot answer my question then yes or no?

The Witness: No, I cannot.

Mr. Barrere: You do not know whether——

The Witness: Because you fix a date that is uncertain and not determinable.

Mr. Barrere: Well, that is just as I said this morning, no one here can answer any questions except the ones they want to.

By Mr. Huggins:

Q. According to the figures of Mr. Madison this morning the expense—the central expense here, or the expense for your central office including salaries and overheads is something like $38,200.00.

A. Well, I would be unable to give you that figure because that is a matter of addition. They could tell you nearer on that than I can.

Q. Now, how many plants has The Ohio Utilities Company?

A. We have Hillsboro, Gallipolis, Circleville, Delaware and the transmission lines from Big Walnut station to Chillicothe.

Q. That is, you have five plants.

A. We have five departments; yes, sir.

Q. According to the statement of Mr. Niles approximately $300.00 a month of your central expense is charged—or say $3,600.00 a year is charged to Hillsboro of the $38,000.00 expense. How does it happen that Hillsboro is given so large a benefit over the other plants?

A. Hillsboro receives a charge in proportion to its gross revenue as compared with the other plants.

[fol. 217] Q. That is, while you have five plants the business in Hillsboro is about one-tenth of your business?

A. Yes, sir. We furnish Hillsboro with its executive and accounting system, engineering system and all at a charge in proportion to the gross revenue of that plant.

Q. Well, I say Hillsboro then is about one-tenth or less than one-tenth of your business.

A. The figures will show, I suppose, what it is.

Q. Now, in addition to that where do the traveling expenses of your Columbus plant come in?

A. When Mr. Hickson or Mr. Wahn or myself make a trip to Hillsboro we render an expense account to the company for that expense and that expense is charged as against Hillsboro in the general expenses of that plant. If we make a double trip such as to Circleville and to Hillsboro the expense is divided.

Q. In connection with that expense could we get some idea of how much it amounts to in the course of a year?

A. It would be very difficult to give you that for the reason that sometimes the necessity arises for some one to go there every week, sometimes once in two weeks. It varies depending upon the work that is being done and the complaints or necessity of our going there to look after the business of that division.

Q. Where can it be found in this report, Exhibit A-1?

A. I think under the heading of "Other Expenses" or "Office Expenses," which includes all the charges made by the central office at

Columbus against Hillsboro. On page 19 you will find the item of "Office Expenses and Supplies" and under that we charge most every [fol. 218] item that is not found in some particular item like "Clerk Hire" or "General Officers" or "Rents;" it goes into a miscellaneous item, the traveling expenses.

Q. It could not be under the heading of "Miscellaneous," though.

A. No, sir, it could not be under the heading of "Miscellaneous." That covers, I think, principally postage, stamps and maybe some little items that they cannot find any other place to charge them to. There is but very little put under "Miscellaneous" because we insist on our distribution being made as complete and perfect as possible.

Q. Well, I am very far wrong in my first figures there of practically $300.00 a month to Hillsboro because of the fact that they are including that $729.95 there to make up, which would be approximately—that you are charging to Hillsboro about $2,400.00 a year from your Columbus office instead of the amount which I estimated of $3,600.00 a year; $2,400.00 a year out of thirty-eight thousand dollar expense.

A. We charge to Hillsboro whatever we may do for the benefit of Hillsboro and its people. If it requires a constant supervision as you might say, repeated calls, in order to give them perfect service and to render them the right kind of service we do it and they pay for it in their rate. If the calls are infrequent then they pay for that and that is charged in the rate, so that there is a fixed charge in proportion to the revenue from all of the properties for the up-keep of the Columbus office. Then each property pays its incidental expenses such as traveling expenses and expenses that may vary; one property may have far more than another in proportion, and it pays [fol. 219] for that expense because that is its individual expense.

Q. But as I say, the condition really works out in Hillsboro that so far as the Columbus office is concerned that Hillsboro pays—well, it is one of five plants and pays about one-fifteenth of the expense?

A. Well, that is a matter of calculation. I could not tell you about that. Of course the other properties, with the exception of Gallipolis, are greater earners than Hillsboro. The transmission line in the past has been a great earner and when it earned a great deal of money it practically paid all of the Columbus office expense or very largely.

Q. Is there any one connected with The Ohio Utilities Company who can give the information and data as to the percentage of expense that Hillsboro pays of the plants of The Ohio Utilities Company for the central office expense.

A. Why, it is in the books and records that the Public Utilities Commission audits each time they audit the books.

Q. Is there any one who can give us that here?

A. Not without going over the books and figuring it up; that is, we cannot carry all those details in our mind, but the books show.

Q. The details which you carry in your mind for one of these hearings are the ones which you want to give to the Commission?

A. Oh, no.

Q. Well, that is all.
A. We always endeavor to be fair.
Q. That is all.

[fol. 220] Cross-examination.

By Mr. Barrere:

Q. What concession does The Ohio Utilities Company make to the Gross-Feibel Manufacturing Company to prevent them from installing a private plant?
A. We make no concession whatever. You must understand that we are governed directly by schedules on file with and approved by this Commission.
Q. How much was their bill decreased?
A. And we have never made a concession to any party except the United States government, which under the law we are permitted to do, of any rate other than the rate on file.
Q. How much, by some means, did you decrease their bill?
A. It has not been decreased one penny.
Q. That is, they are paying as much money now as they were a year ago?
A. They are paying the rate——
Q. I am not asking about the rate; I am asking about the amount of the bill.
A. The amount of the bill will depend upon the service that they take off our lines, and that may vary. During the war period they were pulling very heavy off our lines and since then they have not been pulling so heavy because they have not been manufacturing so much product, and they pay for their current the rate that is fixed by our schedule and they have always paid the rate fixed by our schedule, so far as my knowledge goes.
Q. The same as other power users?
A. And if anybody has given them a discount it has been wholly without authority and I know that it has not been given.
Q. And if their bill has decreased 50 per cent or better, why it has [fol. 221] been simply due to the fact that they are using that much less current?
A. No, sir, not altogether, for this reason; our engineering department called upon them and ascertained that due to a certain operation, that is, I mean putting their entire load on at once, their demand meter was registering the total demand of their plant. Our engineering department, although financially it was against us, advised them that by using certain machines at certain times when other machines would be off they could smooth out their peak demand and thus save a certain amount of their maximum demand. They did so and their bill was correspondingly lower. Now, they could have done that without any information from us but that is a technical business and requires an engineer or a man acquainted with the technical part of it sometimes to give advice. And we have always—and my men are instructed at all times to advise the cus-

tomers so that they can get by with the lowest bill possible to pay the rate fixed in that schedule.

Q. What is The Ohio Utilities Company paying for electricity at Delaware—for the current?

A. Our contract with the C., D. & M. is for a period of fifteen years. The approximate figure is about two and three-fourths cents to three cents at the present time. The contract has a coal clause so that as coal increases in price our charge increases in price. It also has a clause that when the output of their plant increases by certain steps our rate decreases by certain steps so that it is adjusted from month to month in proportion to the cost of coal and in proportion to [fol. 222] the entire output of their central station at Prospect, and the best I can give you is an approximate cost at our switchboard of three cents. We must then distribute it, pay the expenses of distribution station attendants and stand the losses on the lines and transmissions and other equipment, so that our current there costs us in my recollection something like seven and one-half to eight cents when delivered to the customers.

Q. Mr. Martin, you are familiar with the town of Blanchard both as to its size and as to its location in every way, I believe, from your residence in Clinton county for many years?

A. Yes, sir.

Q. What would you say in regard to a plant in a town the size of Blanchard as to what should be the rate as compared with a town the size of Hillsboro, located as they are so close together?

A. Well, knowing Blanchard, which has a municipal plant——

Q. I am not asking about that plant; I am asking you about the town outside of the municipal plant proposition.

A. If they are to pay a return on their investment, to pay their operating expenses and not put it on to the taxpayer, they should have probably thirty cents a kilowatt.

Q. What would you say then of a private company trying to make a contract there at eleven cents?

A. Well, that depends altogether on conditions. If the company desires to do away with the municipal plant and acquire certain interests in that territory to the exclusion of other interests they might make that kind of a rate temporarily.

Q. To make a ten year contract at eleven cents?

A. That might be done. You see in this business sometimes you have to look ahead. There is a certain territory, for instance, that a [fol. 223] large company desires to acquire and keep a competing company out of it and in order to do that they want to take in all the little municipalities and clean up the situation, and to clean up the situation sometimes they are willing to do things that do not return money.

Q. And somebody else pays the bill in some other place for the loss there?

A. Yes, sir.

Q. That is, for example, one of their other towns will pay the loss they are sustaining in Blanchester?

A. As we did in Hillsboro for a time while operating the transmission line at its peak.

Morning Session, Thursday, Nov. 2, 1922.

And also THOMAS D. PIERCE, called as a witness, being first duly sworn, testified as follows:

Examined by Mr. Huggins:

Q. Your name is Thomas D. Pierce?
A. Yes, sir.
Q. You are the appraisal engineer of The Public Utilities Commission of Ohio, are you, Mr. Pierce?
A. Yes, sir, I am; yes, sir.
Q. And acting in that capacity you made an appraisal of the property of The Ohio Utilities Company, used and useful in its business in Hillsboro, Ohio, did you not?
A. Yes, sir, I did.
Q. Under the direction of Mr. White?
A. Yes, sir.
Q. As set forth in Exhibit A-1, pages 3 to 8 inclusive, of Exhibit A previously introduced in this matter we now have on hearing; that is correct, is it, Mr. Pierce?
A. Yes, sir.
[fol. 224] Q. And as shown on page 9 of Exhibit A-1 referred to just now, you placed the buildings housing the power at Hillsboro, Ohio, at a reproduction value of $29,856.43; is that correct?
A. Yes, sir.
Q. What does that item in the amount named include, please?
A. The power house, the small structure used as their office and the pump house, which is just a small structure; that is all.
Q. Now just what do you mean by the power house?
A. The large brick and concrete structure in which are the apparatus of the light and power company.
Q. Also housing the ice plant?
A. Yes, sir.
Q. That figure then includes the whole building, does it?
A. Yes, sir.
Q. How long, Mr. Pierce, have you been in the business or the employment that you are now in?
A. Eight years.
Q. You have been with The Public Utilities Commission eight years?
A. Yes.
Q. That is, The Public Utilities Commission and its predecessors?
A. Yes, sir.
Q. Prior to that what was your occupation?
A. Civil engineer, engaged in the construction of buildings, railroads and miscellaneous items of construction.

Q. For how long?

A. Seven years.

Q. That seven years, if I understand you, does not include the eight years with The Public Utilities Commission and its predecessors?

A. No, sir; seven years before that.

Q. In whose employ, if any one?

A. The Erie and T. & O. C. Railroads.

[fol. 225] Q. Exclusively those two companies during those seven years?

A. Practically all the time, yes, sir.

Q. That was not in any electrical field?

A. Yes, sir; we constructed an electrical power house in 1913 at Randall.

Q. That was for one of the other companies that you named?

A. Yes, sir.

Q. What, Mr. Pierce, in your judgment, would an adequate building, reasonably adequate for the purposes, cost to house the power plant for the production of electricity alone sufficient to supply the needs of Hillsboro, if you have investigated that subject?

A. I haven't made any special investigation of it. I would say that the cost of this structure represents what would be a reasonable estimate of the cost for a structure for the apparatus which they have there, for the objects for which they have it, non-condensing equipment.

Q. There would be no additional cost then or for the additional room required for manufacture of artificial ice.

A. The apparatus used for artificial ice occupies a space 8 by 14 feet, floor space, and then they occupy a mezzanine floor, you might say, but that does not take the whole structure from the floor up; the space that is under the equipment used by the ice company is still occupied by the Hillsboro Light Company. I would say that the structure would have to be substantially the same as it is now whether the ice plant was there or not.

Q. And the machinery and equipment substantially the same, I presume?

A. Yes, sir.

Q. In your judgment then the value of $29,856.43 is no more than [fol. 226] is reasonable, right and proper for a power plant for the production of electricity sufficient for the needs of Hillsboro and vicinity?

A. My idea is that is very reasonable.

Q. Will you tell us, please, Mr. Pierce, if you can, the proportion of the building occupied exclusively in the manufacture of artificial ice?

A. Well, I stated that the only actual space which they take is that artificial ice apparatus, taking 8 to 14 feet. The other space where they actually handle the ice sets up from the floor about 14 or so feet high, and that would not influence the construction of a structure —the fact that that space is occupied by the ice plant itself,—the handling of ice.

Q. It was built to house both operations, was it not?
A. I understand so.
Q. Are you taking into consideration the refrigerating rooms and the loading of ice on the east side of that building?
A. Yes, sir.
Q. What space does that occupy?
A. I would just have to estimate from my memory as to the exact dimensions there of the second floor.
Mr. Huggins: I don't believe the Commission, in view of the fact that it can secure the exact measurement, cares for his estimate.
Chairman Poor: You have called for it.
Mr. Huggins: Well, I supposed he knew but he now says he will make an estimate from recollection. I don't think that will help us, if the Commission please.

By Mr. Huggins:

Q. Now the figures, Mr. Pierce, in the balance of Exhibit No. 1 you know nothing about?
A. The figures in the balance of Exhibit 1?
[fol. 227] Q. Yes, the old Exhibit setting forth their operating expenses, distribution, generating, general, taxes and all of those things, you have no knowledge of the integrity or want of it of those figures, have you?
A. I checked them.
Q. What do you mean, please, by checking them?
A. From actual records in the office of The Ohio Utilities Company.
Q. Yes, but back of that the operations about which these—the operations about which these various totals and schedules are arrived at, you know nothing of that?
A. I checked it. I checked everything that has been handed in here by the Commission's engineers.
Q. And by The Ohio Utilities Company as shown by their books?
A. Yes.
Q. The item of coal in the aggregate of a very large sum, you have no knowledge that that amount of coal was used, have you except as The Ohio Utilities Company told you or exhibit their books?
A. The expenditures I have my own knowledge of; I examined their expenditures, the actual records in their office, which indicated that they spent just exactly what is stated here.
Q. And you assumed that to be true?
A. Yes, sir.
Q. You made no investigation of any expenses past or behind the amounts as shown by the books of the company?
A. The vouchers I examined to see that they actually spent what is stated here for every item.
Q. And the other items than the power station, you appraised, did you?
A. Yes, sir.
[fol. 228] Q. Have you made any investigation since prior to your letter to Mr. White previously referred to, dated April 14th, 1921?
A. Prior to that?

Q. I should say—pardon me, I should have said subsequent to that?

A. I made the inventory and the valuation.

Q. Well, now to proceed; you have made no investigation, as I understand, since that date?

A. No, sir, not in respect to the valuation. I expect that is what you are asking, isn't it?

Q. The valuation and operating expenses also I am asking about.

A. The inventory, I have not made any investigation of it since that time.

Q. Of your operating expenses since the date of your letter referred to of April 14th, 1921?

A. Yes, I have of the operating expenses.

Q. When?

A. In July, 1922. I made an investigation of the operating expenses.

Q. In the office of the company in Columbus?

A. Yes, sir.

Q. None in Hillsboro, Ohio?

A. No, sir.

Q. The five percent depreciation is the figure on what, Mr. Pierce, in detail, please?

A. It is figured on the valuation of $154,656.93, annually.

Q. And you allowed that on the preliminary organization expense of $5,000.00, did you?

A. Yes.

Q. How does that depreciate?

A. The item of which you are speaking of five percent annually is an amount set aside to take care of the actual depreciation of all the equipment, and also to establish a fund for extraordinary ex- [fol. 229] penditures, and it is always, in such propositions as we have here, rate cases, figured on the valuation as a whole. I always do it anyway. That is what I ought to say.

Q. Even when it is not permitted by the Commission itself?

(No reply.)

Q. Now, Mr. Pierce——

A. Did you expect me to answer something? I did not understand that you did.

Q. And that is your method even when the Commission does not allow depreciation on such an item, is it?

A. My own idea, it is, and I have so hand-ed it in that way.

Q. Now, Mr. Pierce, does that building, of a reproduction value, in your judgment, of $29,856.43, in your judgment depreciate in value five percent a year?

A. The building?

Q. That is my question.

A. No, sir, not physically it would not, no, sir.

Q. The fact is that the past few years it has very largely increased in value, hasn't it?

A. Yes, sir.

Q. Do you happen to know what it cost?

A. No, I don't know what the building cost.

Q. About $8,000.00, didn't it?

A. It has been constructed on the installment idea. They had a smaller building, as I understand, and then some of that was taken out and added in to the building—reconstructed it, rather.

Q. You took into consideration original cost prices did you, in your appraisal?

A. No, sir.

Q. Made no allowance there for any part of the building that [fol. 230] had been taken away—torn out?

A. I took the structure as it was when I was there.

Q. You allow depreciation on interest, do you, in your figures?

A. In the valuation of a light and power department company we do not put in the depreciation on the item of interest.

Q. On stock on hand, do you depreciate that?

A. No, sir.

Q. For a month's supply of coal, do you allow depreciation on that?

A. No, sir.

Q. You allowed, however, a depreciation of five percent on $154,000.00, did you?

A. We allowed five percent on $154,656.00 as an item in figuring the actual—or in figuring what the company ought to earn annually.

Q. Even though the buildings do not depreciate near five percent, or at least that character and kind of a building, and some—and possibly others of the items that I have specifically mentioned do not depreciate at all?

A. Yes, sir.

Q. And that fact of course was in your mind when you recommended that rate increases asked for by this company be allowed?

A. Yes, sir.

Q. Do I understand you to say, Mr. Pierce, that you examined every voucher of operating expenses as claimed by the company and as exhibited to you in their books covering the period of time indicated by Exhibit A-1, and probably I ought to add indicated in your letter to Mr. White, referred to on pages 3 to 8 inclusive of that exhibit?

A. One of my engineers and myself examined every voucher that [fol. 231] they have applying to these figures, or if it is an item taken out of stock, or obtained in some other way, we examined the records that they have that indicate the expenditure.

Q. Took their word for it?

A. No, we did not take their word for anything. I examined the actual records of the company and verified those expenditures that I have handed in there. That is my own investigation of—of the company's records.

Q. Did you get any information from Mr. Martin just before you went on the stand?

A. No, sir.

Q. Have you consulted with him since the time of our last hearing when this matter was continued until today?

A. No, sir, I have never heard of this thing at all until last evening.

Q. What proportion of the vouchers did your assistants—how many assistants did you have, Mr. Pierce, in the appraisal of that Hillsboro plant of The Ohio Utilities Company?

A. One, I think is all that was with me.

Q. Well, I would like to have that certain; you ought to know if it was one or more.

A. Well, I have so many of these valuations going on constantly and using the different engineers—but I would say that I only had one man on that valuation with me.

Q. But as to that you are not absolutely sure?

A. Yes, I will say I am absolutely sure.

Q. How long were you and your assistant there?

A. I would like to look up my records on that. I was there a considerable length of time. We checked over the inventory complete at Hillsboro.

Q. What proportion, in your judgment, of the vouchers did your [fol. 232] assistant examine and how much did you examine personally?

A. My recollection is that I had him hunt them out, along with some of The Ohio Utilities Company's employees, and he handed those over and I think I examined them all; but I would not state positively as to that.

Q. What was your assistant's name?

A. Mr. Fink.

Q. Is he still with the Commission?

A. Yes, sir. He was simply helping me.

Q. Did you and your assistant actually view all of the physical property of The Ohio Utilities Company on the occasion of your inspection trip down there?

A. I think that we did, yes, sir.

Q. It is rather important, Mr. Pierce, that our information be definite as to that?

A. Well, I don't think anybody could say that they actually saw every little item of an inventory like that, but I would say that I inspected all of it.

Q. You investigated the books of the company as to their various changes relative to those values, did you?

A. No, sir.

Q. I cannot see then how you come at any valuation or appraisal that would be of value without an inspection absolutely of every item of physical property.

A. I would say that every item entering into this inventory, that I, from my own inspection, examining it down there that it is there.

Ch-irman Poor: Do you claim, Mr. Huggins, that the inventory contains property that is not used by the company or property that is not there?

[fol. 233] Mr. Huggins: I don't claim that the property is not there; I don't know. But I certainly claim that the values here are exorbitant.

Chairman Poor: Well, that is a question of opinion for us in regard to that, but I mean is that inquiry based on the idea that they have valued some property that is not there?

Mr. Huggins: That who has?

Chairman Poor: Either the engineer for the company or the Commissioner's engineer?

Mr. Huggins: No. I have no knowledge one way or the other on that. I certainly am not charging that, if the Commission please.

Chairman Poor: Well, I was wondering whether you were or not.

By Mr. Huggins:

Q. This reproduction value, Mr. Pierce—may I ask the Commission to indulge me—as I understand you know and I do not. Just what do you mean by that?

A. The cost of it.

Q. At the present time?

A. As of when it is expressed in the valuation. August 30th, 1920.

Q. Some two years and a half—not quite that—ago?

A. That is the valuation as of that time with the average prices over a period of five years ending as of August 30th, 1920.

Q. Then if that reproduction value, as you have it set down in your letter that I have referred to, is exhorbitant and outrageously high, as compared with the present values, you still are of the opinion that the Commission should permit The Ohio Utilities to charge [fol. 234] the increases asked for?

A. It is not excessively high as compared with the present costs.

Q. Well, how about the present reproduction value?

A. The reproduction value I would say is equal to what is stated in there—the present day costs—reproduction.

Q. Then the price that The Ohio Utilities Company may charge the public in Hillsboro, Ohio, under your rules, may be and is very largely influenced by the reproduction value of a power plant years ago; is that correct?

A. It states on the inventory that it is over an average—the estimate is over an average of a certain time. I think that answers your question. I have no explanation to make of it.

Q. Other than what you have made?

A. Other than what I have made.

Q. Mr. Pierce, have you ever made a report to this Commission in which you did not recommend that the rates asked for by the public utility then applying be granted?

A. Yes, sir.

Q. You are aware, are you, that the rate asked for would be the highest—I think I am correct in this, although I do not know—would be the highest in the state? I might preface that by saying that there are one or two other places which are charging 15, but a substantial cash discount allowance made.

A. Fifteen is not the only item in that electric light and power schedule.

Q. Let me get at that from another angle, please. What peculiarities in the village of Hillsboro are such as to the cost of the manufacture of electric current that it should cost the people of Hillsboro more than twice what it is costing other communities [fol. 235] in the state of Ohio?

A. Well, I don't say that it is costing them twice all of the other communities or localities in Ohio. I would not want to answer and have it understood that I assumed that. I would not assume that.

Hr. Huggins: Where are those exhibits we had here at the last hearing, please?

Chairman Poor: They should be with the papers.

The Witness: I will go to my office and see if the papers are there, if you will excuse me from the stand.

Mr. Huggins: Certainly.

(And thereupon the witness was temporarily excused from the stand and returned with the documents in question.)

By Mr. Huggins:

Q. I do not find any below six cents. Now, Mr. Pierce, assuming that Wapakoneta is a municipality of approximately 5,300; has a light rate of 10 cents for the first kilowatt hour and eight cents for all over that, will you explain to us if you can what peculiarities in the manufacture of electrical current in Hillsboro would require a rate almost twice as high, to wit, 15 cents.

A. What I would want to find out in the first place in reference to this place you speak of, to wit, Wapakoneta, is whether or not that electric light plant is earning money; I would have to have that information and I would have to make a study of their operation before I could answer anything that would be of any interest to you. I cannot tell you offhand anything about it.

Q. Let me ask you again then, to be sure that I understand the Commissioner refused me the right to do so what pecularities at [fol. 236] Hillsboro make for a rate as high as 15 cents per kilowatt for electric current?

A. Water is scarce; that has been spoken of; in fact, all those things that have been spoken of——

Q. What is the monthly expense of the Hillsboro plant of The Ohio Utilities Company for water?

A. Well, that is not the idea. The idea is the scarcity of it.

Q. Isn't the expense for water to The Ohio Utilities Company so insignificant as to make it absolutely——

A. That is not what we are speaking of, the expense of the water; it is the scarcity of the water; generating apparatus is more expensive where there is a scarcity of it than if they have a large supply.

Q. Al- right, we have the water item; what other?

A. The residences there are scattered pretty well.

Q. Any more than Wapakoneta?

A. I would imagine about the same as Wapakoneta; any of those smaller municipalities; but the fundamental thing that you have got to start with is the cost of operation for each of these places, and then if this schedule that you speak of at the other point, Wapakoneta, is actually earning anything for that industry.

Q. I notice Ottawa, with a population of 2,100; it has a 13 cent per kilowatt hour straight charge, with a ten per cent discount, which would bring it below 12 cents. Do you happen to have any knowledge of conditions there that you can enlighten us why they are so much lower than Hillsboro's proposed rate?

A. No, sir, I have not; one item of the schedule would not indicate anything any way.

[fol. 237] Q. Coal would be higher there than at Hillsboro, wouldn't it?

A. I would expect it to be a little higher yes, than it is in Hillsboro.

Q. Sidney, with a straight rate of 9 cents; can you tell us conditions there as compared with those in Hillsboro making the rate say 33⅓ per cent less?

A. The power plant they do not operate at Sidney; they purchase their current wholesale; I expect that would have some influence over it; as to what the other influences are I cannot say offhand.

Q. Do you know of any other village approximately the size of Hillsboro, which is approximately 4,500, that has an ice plant operated in connection with the manufacture of electricity?

A. I don't recall any now.

Q. Did you examine into the fairness of a rental of $100.00 per month for that much of the plant devoted to the manufacture of artificial ice down at Hillsboro as comared with the total value of the building, twenty-nine thousand odd dollars?

A. Yes, sir.

Q. And that is perfectly fair, is it?

A. I think so, yes, sir.

Mr. Huggins: That will be all.

Examined by Mr. Martin:

Q. Just a minute, Mr. Pierce; Wapakoneta, being a municipal plant, would not come under the supervision of the Commission as to its rates, would it?

A. No, sir.

Q. And from your experience with municipal properties, are their rates based on a return on the property invested or——

A. No, sir, I think they are not. As a usual thing they are not even earning—they are not earning anything I think under the [fol. 238] operating costs that we have had since 1918.

Q. Now, Mr. Pierce, you say that the water supply has something to do with the cost of operation, and the cost of equipment to produce current. I wish you would make yourself clear as to whether that applies to condensing or non-condensing equipment?

A. Yes, sir, that was the idea of what I had in mind.

Q. Then with an ample water supply you would get a greater efficiency out of your boilers and not require such a large size boiler?

A. Yes, sir.

Q. You would also get greater efficiency our of your equipment.

A. That was the idea I had in mind, yes, sir.

Q. And you would buy a different class of equipment if you had the water for condensing purposes?

A. Certainly.

Q. Now you were inquired of with reference to the depreciation of five per cent on one item of the building; the depreciation of five per cent applies to the entire property, does it not?

A. Yes, sir, I explained that I think.

Q. And that is taken as a rule so as to average the total depreciation?

A. Yes, sir.

Q. Now that would cover such an item as a transformer that had been installed probably only a few days and would be struck by lightning and then go out?

A. I explained that I think, yes, sir.

Q. And meters and all other equipment?

A. Yes, sir, all the equipment, the entire plant.

Q. So that the five per cent is an average as determined by the [fol. 239] past experience and judgment of operators as a fair average over all the property?

A. That is the idea that I had, yes, sir.

Q. The life of poles and other outside equipment varies from a few years to 15 or 20 years and this depreciation covers anything of that kind?

A. Yes, sir.

Q. So that in your opinion is five per cent on the entire property a fair, average depreciation?

A. It is.

Q. Now in making up your estimate, which you say you made I believe in July of this year, as to the rates, did you take into account any new or additional equipment such as meters, transformers and extensions that the company has made to its property in figuring your rate, or did you take the valuation as determined in your report under date of May 30th, to Mr. White?

Mr. Huggins: What page is that on?

Mr. Martin: It is the report you have been examining him about, April 14th, 1921.

By Mr. Martin:

Q. Did you use the figures as shown in that report in making your recent calculations, or did you add to those figures the construction items since?

A. I did not add anything. I figured an eight per cent rate of return and a five per cent depreciation allowance, on the $154,656.00 appraisal.

Q. So that it is upon that basis that the calculation has been made?
A. Yes, sir.
Q. And that report you have, under the rules of the Commission, handed to your superior, Mr. White?
A. Yes, sir.
Q. Now some inquiry has been made as to the coal item; I wish [fol. 240] you would explain just how you make an examination of these items, whether from actual bills, from coal companies billing it to The Ohio Utilities Company and from the freight bills showing shipment of the identical cars to Hillsboro; in other words, give us the minutia of the tracing out of these coal shipments and coal purchases?
A. I examined all of these items, the actual vouchers showing the cost of the coal, the freight items, and I think in Hillsboro there was an item of handling it, possibly a small item for handling that coal. Every item was investigated. I saw the actual evidence of the expenditure.
Q. The item of handling it—you refer to the unloading of the coal?
A. I presume so, I think there was one there as I recall it now. I will state absolutely that the information that I handed in represents the actual expenditures from observation of our own engineers, without any reference whatever to what The Ohio Utilities Company has handed in. It is our own examination of their records.
Q. For further information I wish to ask you if these actual bills constitute a part of the vouchers that you referred to?
A. Yes, sir, they do.
Q. And you have checked these actual vouchers and the amounts of them as against the cash that was paid out?
A. Absoutely, we have.

Mr. Martin: I don't know of anything else.

Examined by Mr. Barrere:

Q. Mr. Pierce, do you know of any reason why it would take more coal to produce electricity at one time than at another?
[fol. 241] A. Whether the apparatus was operating with a load, all it could handle, or if only a small load, would influence it.
Q. Would it require a much larger quantity of coal to produce, I suppose you might call it a kilowatt hour of electricity at one time than at another?
A. It certainly would.
Q. And ever since The Ohio Utilities Company has taken hold of this plant they have made the equipment so that it is more efficient and better than it was when they secured it, haven't they?
A. I have had no occasion to examine the old equipment; I don't know what was there.
Q. At the present time though it is up-to-date?
A. Under the circumstances that they have to operate under I would say it is, yes, sir.

Q. And if it happens that following the installation of new machinery and new equipment that it required a large percentage more coal, to produce a kilowatt hour of electricity, than it did before, that has been due to changed conditions?

A. The quality of the coal would influence it also to a very large extent. We have not had a very high quality of coal for several years now. It is hard to obtain. That has influenced it in different public utilities. I have often heard operators speak of that all over the state.

Q. It would then simply be a coincidence that immediately following the application for an increase in rate that a larger amount of coal was immediately required to produce a kilowatt of electricity? [fol. 242] A. I don't know anything about that, whether it has increased or not.

Q. Well, I say if it happened though, that would simply be a coincidence due to conditions which happened to exist?

A. I don't know.

Q. Do you consider the expenditures made by The Ohio Utilities Company in the conduct of their plant at Hillsboro as reasonable?

A. I do.

Q. Do you consider that the plant is efficiently and economically managed?

A. Yes, sir.

Mr. Barrere: That is all.

Chairman Poor: Mr. Pierce, in making the valuation of the building at Hillsboro, which houses both the electric light plant and the ice plant, you have put a total valuation on that building of some twenty-nine thousand odd dollars?

The Witness: Yes, sir, but that $29,000.00 includes a little office building and one other small structure; about $4,000.00 of it is in this structure.

Chairman Poor: And in allowing a return on that valuation of $29,000.00 of five per cent. depreciation and eight per cent. return on the valuation, making a total of thirteen per cent., is that offset in any way in your calculation and in your report to the Commission for that part of the building that is used by the ice plant?

The Witness: Only that we have shown in their statement of their revenue the ice company's rental.

Chairman Poor: Of $100.00 a month?

The Witness: Yes, sir.

Chairman Poor: Or $1,200.00 a year?

[fol. 243] The Witness: Or $1,200.00 a year, yes, sir.

Chairman Poor: Would that $1,200.00 a year rental as paid by the ice plant offset a thirteen per cent. charge against that part of the building that is used by the ice plant, in your judgment.

The Witness: It would represent $9,000.00; it would represent about one-third of the estimated cost of the building. I would say it represents it easily.

Chairman Poor: What is that?

The Witness: It easily represents it.

Chairman Poor: That would represent then the depreciation and return, that is, the $1,200.00 would represent a depreciation and return on one-third of the building?

The Witness: Yes, sir.

Chairman Poor: Does the ice plant occupy one-third of the building?

The Witness: No, sir; it does not.

Chairman Poor: When you were asked a question some time ago, in your recommendation to the Commission allowing five per cent. depreciation on the building, is that made up—in making a five per cent. depreciation on the total physical property, that does not mean that each item of that physical property is depreciated five per cent. per year?

The Witness: No, sir, that is not my understanding.

Chairman Poor: What is your idea of that? How did you arrive at that total of five per cent? Is it that some items are depreciated more and some items less and the general average is five per cent? [fol. 244] The Witness: Yes, sir, the average of all.

Chairman Poor: That is all.

Re-examined by Mr. Barrere:

Q. Just one other question; and this is true even if this building was originally—as originally erected, was practically all of it—was entirely for an ice plant.

A. Well, I don't quite understand what it is you are asking.

Q. You stated that less than one-third of that building is used for the ice plant and that less than one-third of the value of the building should be charged to the ice plant, and I am simply going upon my own personal knowledge that the building was erected as an ice plant—of over one-half of it for an ice plant, and an ice plant alone; and upon that basis I am making the inquiry that it seems strange to me that this condition should exist.

Mr. Martin: It looks to me like we are straying away out in the woods.

Chairman Poor: It is a question of what the actual condition is there now, how much of the building is used for the electric plant and how much of it for the ice plant. I understand the witness to say that less than one-third of it was used for the ice plant, irrespective of what it was originally constructed for. It might have been constructed for a slaughter house, as far as that is concerned.

Chairman Poor: * * * Mr. Pierce, in the valuation of the building, does that include the cost of any machinery in the building?

The Witness: No, sir.

Chairman Poor: What is your answer?

The Witness: No, sir.

[fol. 245] Chairman Poor: The valuation that you have submitted to the Commission of the property there, does that include any of the ice making machinery at all?

The Witness: No, sir, not any.

BEFORE PUBLIC UTILITIES COMMISSION

ORDER FIXING RATES—Dated December 12, 1922

This day, after full hearing heretofore granted respondent, the Ohio Utilities Company, this matter again came on for consideration in pursuance of the investigation, by this Commission, to determine the propriety of proposed increased rates and charges for electric service at Hillsboro, Ohio, contained in a schedule, designated P. U. C. O. No. 3, filed by said respondent to become effective August 26, 1920, and the order of this Commission, made and entered herein upon the fifth day of July, 1921.

The Commission, being fully advised in the premises, and having received and carefully considered the evidence and exhibits offered at the hearing and rehearing herein, and having made an independent examination of the books and property of the respondent company, finds:

That the fair present value of the physical property of the respondent, used and useful for the convenience of the public in the furnishing of electrical service to consumers thereof in the village of Hillsboro, Ohio, as of August 30, 1920, in the sum of $138,521.00.

And, there having been no proof of the actual expenditure of moneys for the ordinarily accepted intangibles and overheads, allowances should only be made for the following amounts, viz:

[fol. 246] Taxes during construction	$1,081.00
Interest during construction	1,500.00

That, to maintain an adequate stock of materials and supplies, there should be allowed the sum of $1,071.00.

That, in the carrying on of its electrical service in said village, the respondent should have a working capital of $2,882.00.

Determining the present value of said property, as a whole, as of said date, August 30, 1920, to be the sum of $145,055.00.

That the reasonable operating expenses (including an allowance of $3,000.00 for taxes), for the furnishing of respondent's said electrical service in said village for a period of one year should, and, with a reasonable efficient administration of the affairs of said company, could be the sum of $37,608.00.

That a reasonable annual allowance for depreciation upon said property will be five per centum of the said present value thereof, to wit, the sum of $7,252.00.

That, therefore, the actual cost of furnishing electrical service for a period of one year in the village of Hillsboro, Ohio, should be the sum of $44,860.00.

That a reasonable return upon the respondent's said property, so used in the furnishing of said service in said village, for the period of one year would be the sum of $8,703.00.

That, from its said investigation aforesaid it is apparent that this plant has been uneconomically planned and constructed, in many regards inefficiently operated, and the service conducted without that

[fol. 247] regard for attracting new business and encouraging the greater use of the product which would reflect the saving per unit incident to increased volume of output, recognized as a basic principle in the conduct of commercial enterprises.

That, at this time the respondent, in recognition of its responsibilities in this regard, is actually revamping its said plant for the purpose of securing an economical and efficient operation.

That the public may not be penalized by extortionate rates for the omissions of the administration of a public utility's affairs.

That, under an efficient administration and economical conduct of respondent's electrical plant in the said village of Hillsboro, Ohio, the schedule of rates and charges provided and prescribed by the order, made and entered herein as of date July fifth, 1921, will produce an annual gross revenue of $53,563.00, an amount sufficient to pay the above reasonable cost of furnishing said service, and provide the said depreciation reserve charge and the said net return upon respondent's said property.

The Commission, taking into consideration the value of respondent's said property, used and useful in the furnishing of said service, the cost of furnishing the same, and the necessity for making reservations for income for depreciation and contingencies, therefore further finds:

That the said proposed rates and charges set forth in said schedule P. U. C. O. No. 3, for the following classes and kinds of service, to wit:

Residence and commercial lighting: 15c. per k. w. h. for the first 200 k. w. h. net; 12c. per k. w. h. for all over 200 k. w. h. net.

[fol. 248] Private garage automobile charging: Minimum bill, $2.00 per month;

are excessive, unjust, unreasonable and unlawful.

That just, reasonable and lawful rates and charges for the furnishing of the aforesaid classes of service in said village are:

Residence and commercial lighting: 12c. per k. w. h. for the first 200 k. w. h., net; 10c. per k. w. h. for all over 200 k. w. h., net.

Private garage automobile charging: Minimum bill, $1.00 per month, and

That the rates and charges set forth in said schedule, P. U. C. O. No. 3, for all other classes and kinds of service are not unjust, excessive or unreasonable, and that said schedule of rates and charges, amended by the substitution of said rates and charges for said residence and commercial lighting, and said private garage automobile charging services, will yield the respondent a fair, reasonable and just return upon its said property.

It is therefore ordered that the following rates and charges, to wit:

Residence and commercial lighting: 12c. per k. w. h. for the first 200 k. w. h. per month net; 10c per k. w. h. for all over 200 k. w. h. per month, net.

Private garage automobile charging: Minimum bill, $1.00 per month, net;

to be substituted for the rates and charges for such service set forth and provided in said proposed schedule, which, herein, have been found and determined to be excessive, unjust and unreasonable. It is further

[fol. 249] Ordered, that respondent, said The Ohio Utilities Company, be, and hereby it is notified, directed and required to correct its said schedule to conform hereto, and authority hereby is granted said company to make such correction by interlineation in red ink in its said published schedule. It is further

Ordered, that said the Ohio Utilities Company be, and hereby it is notified, directed and required to refund, in cash or by credit upon current bills, by the tenth of June, 1923, any difference there may be between the charges it has imposed upon its consumers of electrical energy in the village of Hillsboro, Ohio, from and after said twenty-sixth day of August, 1920, and the charges for said service based upon the rates and charges hereinbefore found and determined to be just and reasonable; whereupon the undertaking heretofore filed herein by said company shall be discharged and released. It is further

Ordered, that as to all other matters, this investigation be, and hereby it is discontinued.

BEFORE PUBLIC UTILITIES COMMISSION

APPLICATION FOR REHEARING—Filed December 29, 1922

Now comes the Ohio Utilities Company, respondent to the complaint filed in the above matter, a public utility corporation organized under the laws of Ohio and serving the village of Hillsboro and the inhabitants thereof with electric and gas service, and petitions the Honorable Public Utilities Commission for a rehearing of the above matter, and that the order thereof fixing certain rates for public utility electric service prescribed therein, which order is re-

[fol. 250] cited herein and marked Exhibit "A," be set aside and held for naught, and that the schedule heretofore filed by said company, effective as of August 26, 1920, be restored and made the effective schedule for said service. This application is based on the following facts:

1. That the judgment, decision and order of the Commission are contrary to the laws of the State of Ohio.

2. That the said judgment, decision and order of said Commission are contrary to the weight of, against, and not supported by any testimony offered at the hearing of said cause before this Commission.

3. That the said judgment, decision and order, if enforced, will confiscate and take from said the Ohio Utilities Company its property at Hillsboro, Ohio, without due process of law, and without allowing to said company an adequate—or in fact any substantial

return on the value of said property—in contravention of the laws and constitution of the State of Ohio and of the United States.

4. That said judgment, decision and order are contrary to the findings as made by the special examiner and the chief engineer of this Commission as shown by their reports, copies of which have heretofore been introduced as evidence in this case. That a later report of the approximate date of July 25, 1922, of the earnings and operating expenses and net earnings of the electrical property of the Hillsboro division of the Ohio Utilities Company was made by a special examiner of the Public Utilities Commission—which this complainant, under a ruling and order of the Commission was not permitted to inspect or examine—but which report was considered [fol. 251] by the Commission as a part of the evidence in this case, and that no opportunity was afforded this complainant to examine in chief or cross-examine said special examiner with reference to said report used and considered by the Commission as evidence in this case.

5. That the Commission erred in failing to fix a tentative valuation of the property of The Ohio Utilities Company, Hillsboro division, used and useful in furnishing electrical service to the said village of Hillsboro, Ohio, and its inhabitants, and permit this respondent to file a protest and have a hearing thereof before said valuation was made final—but that contrary and against the law of the State of Ohio said Commission arbitrarily fixed a final value on said property at the time and in the same order (to wit, the final order herein) fixing the rates to be charged by this respondent.

6. That the findings, order and judgment of this Commission, as announced in its order under date of December 12, 1922, is made to apply to an untrue condition existing as of the approximate date of said order—instead of a finding being based on the true and actual condition of the property used and useful in the service, the cost of service, the revenue and net return derived from said property as of the date of said protest at which time a cause of complaint, if any, accrued to the complainant, as against this respondent.

7. That since the issuance of the judgment, decision and order of this Commission, The Ohio Utilities Company has applied said proposed rates fixed in said order to its earnings since the filing of said [fol. 252] schedule, and if said rates are to be promulgated, sustained and applied same will result in a refund by this company to the patrons thereof of the sum of approximately $15,500.00.

8. That the judgment, decision and order as made by this Commission was upon the arbitrary and personal opinion of said Commission to the effect that the cost of material and labor of said company at its plant in Hillsboro would be reduced over the cost of said material and labor as found by the special examiner and the chief engineer of this Commission and a high estimate of gross earn-

ings made by the Commission. That the Commission in making said findings has wholly disregarded all testimony, weight of evidence and rules of law applicable to a hearing and determination of judicial proceedings or findings of fact by a judicial tribunal.

9. That said order and the findings therein are unreasonable, unjust, illegal and contrary to law. That said judgment, decision and order of the Commission are wholly against the weight of the testimony, the laws of the land, and is an injustice to said utilities company.

EXHIBIT "A" TO APPLICATION

This day, after full rehearing heretofore granted respondent, The Ohio Utilities Company, this matter again came on for consideration in pursuance of the investigation, by this Commission, to determine the propriety of proposed increased rates and charges for electric service at Hillsboro, Ohio, contained in a schedule, designated P. U. C. O. No. 3, filed by said respondent to become effective August 26, 1920, and the order of this Commission, made and entered herein upon the fifth day of July, 1921.

[fol. 253] The Commission, being fully advised in the premises, and having received and carefully considered the evidence and exhibits offered at the hearing and rehearing herein, and having made an independent examination of the books and property of the respondent company, finds:

That the fair present value of the physical property of the respondent, used and useful for the convenience of the public in the furnishing of electrical service to consumers thereof in the village of Hillsboro, Ohio, as of August 30, 1920, is the sum $138,521.00.

And, there having been no proof of the actual expenditure of moneys for the ordinarily accepted intangibles and overheads, allowances should only be made for the following items in the following amounts, viz:

Taxes during construction	$1,081.00
Interest during construction	1,500.00

That, to maintain an adequate stock of materials and supplies, there should be allowed the sum of $1,071.00.

That, in the carrying on of its electrical service in said village, the respondent should have a working capital of $2,882.00.

Determining the present value of said property, as a whole, as of said date, August 30, 1920, to be the sum of $145,055.00.

That the reasonable operating expenses (including an allowance of $3,000.00 for taxes), for the furnishing of respondent's said electrical service in said village for a period of one year should, and, with a reasonably efficient administration of the affairs of said company, could be the sum of $37,608.00.

[fol. 254] That a reasonable annual allowance for depreciation upon said property will be five per centum of said present value thereof, to wit, the sum of $7,252.00.

That, therefore, the actual cost of furnishing electrical service for a period of one year in the village of Hillsboro, Ohio, should be the sum of $44,860.00.

That a reasonable return upon the respondent's said property, so used in the furnishing of said service in said village, for the period of one year would be the sum of $8,703.00.

That, from its said investigation aforesaid, it is apparent that this plant has been uneconomically planned and constructed, in many regards inefficiently operated, and the service conducted without that regard for attracting new business and encouraging the greater use of the product which would reflect the saving per unit incident to increased volume of output, recognized as a basic principle in the conduct of commercial enterprises.

That, at this time the respondent, in recognition of its responsibilities in this regard, is actually revamping its said plant for the purpose of securing an economical and efficient operation.

That the public may not be penalized by extortionate rates for the omissions of the administration of a public utility's affairs.

That, under an efficient administration and economical conduct of respondent's electrical plant in the said village of Hillsboro, Ohio, the schedule of rates and charges provided and prescribed by the order, made and entered herein as of date, July fifth, 1921, will [fol. 255] produce an annual gross revenue of $53,563.00, an amount sufficient to pay the above reasonable costs of furnishing said service, and provide the said depreciation reserve charge and the said net return upon respondent's said property.

The Commission, taking into consideration the value of respondent's said property, used and useful in the furnishing of said service, the cost of furnishing the same, and the necessity for making reservations from income for depreciation and contingencies, therefore further finds:

That the said proposed rates and charges set forth in said schedule P. U. C. O. No. 3, for the following classes and kinds of service, to wit:

Residence and commercial lighting: 15c. per k. w. h. for the first 200 k. w. h., net; 12c. per k. w. h. for all over 200 k. w. h., net.

Private garage automobile charging: Minimum bill, $2.00 per month.

are excessive, unjust, unreasonable and unlawful.

That just, reasonable and lawful rates and charges for the furnishing of the aforesaid classes of service in said village are:

Residence and commercial lighting: 12c. per k. w. h., net; 10c. per k. w. h., for all over 200 k. w. h., net.

Private garage automobile charging: Minimum bill $1.00 per month, and

That the rates and charges set forth in said schedule, P. U. C. O. No. 3, for all other classes and kinds of service are not unjust, excessive or unreasonable, and that said schedule of rates and charges, [fol. 256] amended by the substitution of said rates and charges for said residence and commercial lighting, and said private garage

automobile charging services, will yield the respondent a fair, reasonable and just return upon its said property.

It is, therefore, ordered, that the following rates and charges, to wit:

Residence and commercial lighting: 12c. per k. w. h., for the first 200 k. w. h. per month, net; 10c. per k. w. h., for all over 200 k. w. h. per month, net.

Private garage automobile charging: Minimum bill $1.00 per month, net; be substituted for the rates and charges for such service set forth and provided in said proposed schedule, which, herein, have been found and determined to be excessive, unjust and unreasonable. It is further

Ordered, that respondent, said The Ohio Utilities Company, be, and hereby it is notified, directed and required to correct its said schedule to conform hereto, and authority hereby is granted said company to make such correction by interlineation in red ink in its said published schedule. It is further

Ordered, that said The Ohio Utilities Company be, and hereby it is notified, directed and required to refund, in cash or by credit upon current bills, by the tenth day of June, 1923, any difference there may be between the charges it has imposed upon its consumers of electrical energy in the Village of Hillsboro, Ohio, from and after said twenty-six day of August, 1920, and the charges for said service based upon the rates and charges hereinbefore found and [fol. 257] determined to be just and reasonable; whereupon the undertaking heretofore filed herein by said company shall be discharged and released. It is further

Ordered, that as to all other matters, this investigation be, and hereby it is discontinued.

EXHIBIT "B" TO APPLICATION

Recapitulation of Figures and Statements Contained in Order of the Public Utilities Commission of Ohio in Advanced Utility Rate Proceeding No. 21, Dated December 12, 1922

(Made by Accounting Department of the Ohio Utilities Company)

Gross earnings:		
As per arbitrary finding of Public Utilities Commission as to what gross earnings would be for 12 mos. period	$53,563.00	
Total gross earnings		$53,563.00

Operating expenses (including taxes):		
As per arbitrary statement of Public Utilities Commission as to what operating expenses should be for 12 months period	$37,608.00	
Total operating expenses		$37,608.00
Net earnings		$15,955.00

Disposition of Net Earnings—$15,955.00—as Shown Above as per Latest Ruling of Public Utilities Commission as Arbitrarily Made in Their Order Dated December 12, 1922

Interest on investment:	
6% $145,055.00—12 months	$8,703.30
Depreciation allowance:	
5% $145,055.00—12 months	$7,252.75
	$15,956.05
Deficit	$1.05

[fol. 258] EXHIBIT "C" TO APPLICATION

Statement Gross Eearnings and Operating Expenses Electrical Department, Hillsboro Division, the Ohio Utilities Company, 27 Months Ended November 30, 1922, Operating under P. U. C. O. No. 3, Effective August 26, 1920

(Made by Accounting Department of The Ohio Utilities Company)

27 Months Ended November 30, 1922

Gross earnings:		
Electric lighting sales, municipal lighting sales, power and rent September 1, 1920, to Nov. 30, 1922	$128,643.47	
Total gross earnings		$128,643.47
Operating expenses:		
Generating, distribution, general and accrued taxes, September 1, 1920, to November 30, 1922	$90,366.10	
Total operating expenses		$90,366.10
Net earnings		$38,277.37

Disposition of Net Earings—$38,277.37—as Shown Above, if Order of Public Utilities Commission under Date of December 12, 1922, Should be Complied With

Approximate amount ordered to be rebated, or refunded to consumers by June 10, 1923	$15,120.00
Depreciation to be charged at rate of 5% over 27 months period, on value of property as arbitrarily found by Public Utilities Commission in their order. Valuation $145,055.00	16,318.68
[fol. 259] Return upon investment at the rate of 6%, over 27 months period (rate of return arbitrarily fixed) on value of property as arbitrarily found by Public Utilities Commission in their order. Valuation $145,055.00	19,582.42
Total disposition	$51,021.10
Net earnings—deficit	$12,743.73

EXHIBIT "D" TO APPLICATION

Estimated statement of gross earnings and operating expenses electric department, Hillsboro division, the Ohio Utilities Company theoretical 12 months periods if order of Public Utilities Commission of Ohio dated December 12, 1922, should be complied with as to rates, based on experience of past 27 months of careful, experienced, efficient, and intelligent operation. (See Exhibit "C")

(Made by Accounting Department of the Ohio Utilities Company)

Gross earnings:		
Electric sales, and rent from ice company for period of 12 months	$50,454.84	
Total gross earnings		$50,454.84
Operating expenses:		
Generating, distribution, general and taxes (based on careful and economical operation) for period of 12 months	$40,162.68	
Total operating expenses		$40,162.68
Net earnings		$10,292.16

Interest on investment:		
[fol. 260] 8% $154,656.00—12 mos. ..	$12,372.48	
Depreciation allowance:		
5% $154,656.00—12 mos.	7,732.80	
		20,105.28
Deficit		$9,813.12

(NOTE.—The above statement takes into consideration the necessary and legitimate expenses incident to furnishing an adequate and efficient 24 hours per day electric service to the Hillsboro public under the service conditions pertaining to their own locality and environs.)

EXHIBIT E TO APPLICATION

April 14, 1921.

Mr. L. G. White, Chief Engineer the Public Utilities Commission, Columbus, Ohio.

DEAR SIR: I have investigated the above matter at Hillsboro and at the company's offices in Columbus.

The P. U. C. O. No. 3 electric schedule filed to become effective August 26, 1920, increased the rates for electric service in general, as follows:

Residence and Commercial Lighting:

	Old rate	New rate
First 200 K. W. H.	.10	.15
All over 200 K. W. H.	.10	.12
Minimum charge	.50 Month	1.00

Employees Residence Lighting:

All K. W. H.	.04	.05
Minimum charge	.50 Month	1.00

Heating and Cooking:

First 100 K. W. H.	.04	.07
All over 100 K. W. H.	.04	.06
Minimum charge	.50 Month	3.50 per K. W. H. connected

[fol. 261] Private Garage:

All K. W. H	.75.5	.10
Minimum charge	.50 Month	2.00

Power:	Old rate	New rate
Maximum demand charge	1.50 K. W.	2.00
First 500 K. W. H.	.04	.06
Next 500 K. W. H.	.04	.05
Next 1,000 K. W. H.	.03	.04.5
Next 500 K. W. H.	.03	.04
Next 2,000 K. W. H.	02.5	.04
Next 2,500 K. W. H.	.02.0	.04
Over 7,000 K. W. H.	1.75	.04

Customer owned Meter Allowance per month:

Up to 10 Amp. 1 Phase	No allowance	15c.
15 to 40 Amp. 1 Phase	No allowance	25c.
Above 40 Amp. 1 Phase	No allowance	30c.
All sizes—Polyphase	No allowance	30c.

(Two-thirds of all meters are customer owned.)

Cost of Service for 12 Months Ending August 31, 1920, Effective Date of New Schedule

From examination of the company records, I find the operating expenses assignable to electric service, for the 12 months ending August 31, 1920, to be:

Operating Expenses, Maintenance and Taxes:

Generating:		
Power station labor	$4,084.05	
Fuel	17,608.75	
Miscellaneous	2,560.32	
Total—Generating		$24,253.10
[fol. 262] Distribution:		
Overhead system	$766.01	
Meter repairs	262.42	
Street lights	142.70	
Miscellaneous	191.84	
Total—Distribution		1,362.97

General:		
General officers	$549.00	
Clerks	1,119.09	
Office exp. and supplies	469.23	
Rents	652.60	
Telephones	120.24	
Store room exp.	62.36	
Garage	306.78	
Advertising	3.96	
Insurance	680.00	
Miscellaneous	42.01	
Total—General		4,005.27
Total operating and maintenance		$29,621.34
Taxes		2,760.00

Property Valuation to Date

I have made inventory and tentative appraisal of the property used and useful for electric service on basis of general prices obtaining over 5 year period ending August 26, 1920. The reproduction cost less depreciation is $1,546.56 as of August 26, 1920.

[fol. 263] Total Cost of Service

We now have for the year ending August 31, 1920, the following total cost-of-service:

Operating and maintenance expense	$29,621.00
Taxes	2,760.00
Depreciation allowance, 5% on $1,546.56	7,733.00
Eight per cent return on $1,546.56	12,372.00
Total cost of service	$52,486.00

Effect of New Rate Applied to Business of Above Year

During the above 12 months ending August 31, 1920, the business done by the electric department was as follows:

	K. W. H. sales	Revenue received
Residence and commercial light	228,770	$23,961.00
Street lights	53,664	3,470.00
Power	233,429	10,331.00
Totals	515,863	$37,762.00
Rent received from ice company for power plant space		1,200.00
Total		$38,962.00

If P. U. C. O. No. 3 schedule had been effective during the above 12 months the following revenue would have been received:

Residence and Commercial:	
Light	$32,903.00
Street Lights	3,870.00
Power	16,172.00
Total	$52,945.00
[fol. 264] Rent received from ice plant	1,200.00
Total	$54,145.00

We see, therefore, that the cost of electric service for the above 12 months was $52,486.00; that the actual electric revenues and ice company rental received were $38,962.00, which gives about 4.26% for both depreciation allowance and return on the property; and that the revenues, if the P. U. C. O. No. 3 protested schedule had been in effect, would have been $54,145.00, which would give 14.05% available for both depreciation allowance and return on the property.

Considering 13%, depreciation allowance 5% plus 8% rate of return, as proper, we see that on basis of above 12 months the P. U. C. O. No. 3 schedule rates are slightly excessive.

We now will consider another 12 month period, 6 months prior to and 6 months subsequent to August 31, 1920, effective date of P. U. C. O. No. 3.

March 1, 1920 to February 28, 1921—Operating Expenses, Maintenance and Taxes

	March-August, 1st 6 months	Sept.-Feb., 2nd 6 months	
Generating:			
Power station labor	$1,986.60	$2,405.44	
Fuel	9,097.20	12,319.38	
Miscellaneous	1,150.37	1,863.31	
Total generating	$12,234.17	$16,588.13	$28,822.30
Distribution:			
Overhead system	$384.09	$886.36	
Meter repairs	119.60	242.50	
[fol. 265] Street lights	47.20	73.85	
Miscellaneous	40.41	151.49	
Total distribution	$591.30	$1,354.20	$1,945.50

General:	March-August, 1st 6 months	Sept.-Feb., 2nd 6 months	
General officers	$309.00	$425.00	
Clerks	598.89	871.20	
Office exp. and sup	261.01	362.38	
Rents	424.60	333.00	
Telephones	68.20	71.74	
Store room expense	31.47	48.54	
Garage	222.66	223.04	
Advertising	3.96	8.50	
Insurance	360.00	360.00	
Miscellaneous	12.66	72.20	
Total general	$2,292.45	$2,775.60	$5,068.05
Total operating and maintenance	15,117.92	20,717.93	35,835.85
Taxes	1,381.00	1,528.00	2,909.00

Total Cost of Service

We now have for the 12 months ending February 28, 1921 (6 months prior and 6 months subsequent to effective date of advanced rate) the following total cost of service:

Operating and maintenance	$35,836.00
Taxes	2,909.00
Depreciation allowance, 5% on $154,656.00	7,733.00
8% return on $154,656.00	12,372.00
Total cost of service	$58,850.00

[fol. 266] Effect of New Rate Applied to Business of Above Year.

	K. W. H. sales	Revenue received
Residence and commercial light	236,187	$33,970.00
Street lights	53,443	3,854.00
Power:		
Energy	238,102	11,216.00
Demand	220 K. W.	5,280.00
Total electric		$54,320.00
Add rent from ice company		1,200.00
Total revenue		$55,520.00

We see, therefore, that the cost of electric service for the above 12 months was $58,850.00, and that if the P. U. C. O. No. 3 protested schedule had been in effect for the entire 12 months the revenues would have been $55,520.00, which represents 10.8% available for both depreciation allowance and return on the property.

Considering 13%, depreciation allowance 5% plus 8% rate of return, as proper, we see that on basis of above 12 months the P. U. C. O. No. 3 schedule of rates is as a whole, not excessive.

Apportionments

In the above statements of operating expenses the apportionments between electric and ice operation are in general as follows:

Power station labor and fuel, 70% electric and 30% ice for months of May, June, July, August 75% electric and 25% ice for September; 80% electric and 20% ice for October and March; 85% electric [fol. 267] and 15% ice for November and April; 90% electric and 10% ice for December, January and February.

General expenses are apportioned 60% electric, 20% ice, and 20% gas.

From the record of the testimony the impression is given that the ice company is unduly profitable. The fact is that for the past year the profits of the ice company were only a few hundred dollars. From my personal investigation, I believe the apportionments of operating expenses between the electric plant and the ice plant are fair and equitable to both plants.

The average cost per ton, including freight and handling over a period of 14 months, as shown by invoices paid by The Ohio Utilities Company, was:

1920,	Jan.	$3.25
	Feb.	6.59
	March	4.35
	April	5.02
	May	6.87
	June	4.68
	July	12.87
	Aug.	10.35
	Sept.	6.96
	Oct.	4.68
	Nov.	8.01
	Dec.	7.52
1921,	Jan.	6.82
	Feb.	5.34

Recommendations

I recommend that P. U. C. O. No. 3, The Ohio Utilities Company, electric service, Hillsboro, Ohio, filed to become effective August 26, 1920, be approved.

Yours truly,

Thomas D. Pierce, Appraisal Engineer. TDP—GE.

[fols. 268 & 269] EXHIBIT F TO APPLICATION—Omitted; printed side page 135 ante

[fol. 270] From the foregoing statements and exhibits prepared by the respondent in this case—and giving due consideration to Exhibit "A," the order of the Public Utilities Commission, dated December 12, 1922, we, The Ohio Utilities Company, the respondent, wish to draw certain conclusions—submitted for due and serious consideration in this Advanced Utility Rate Proceeding No. 21, at this time, as follows:

1. That the fair present value of the physical property of the respondent, used and useful for the convenience of the public in the furnishing of electrical service to the consumers of Hillsboro, Ohio, as of August 30, 1920, is the sum of $154,656.00, plus additions for actual and real extensions and improvements and additions and betterments since the date of August 30, 1920, to December 12, 1922—and not $145,055.00, as stated in the order of the Public Utilities Commission, under date of December 12, 1922. No evidence has been introduced in this case to substantiate the figure of $145,055.00. The reports of a special examiner in this case and of Mr. White, the chief engineer of the Public Utilities Commission, fixed a fair and reasonable value of the property as of August 30, 1920, to be $154,656.00 and no evidence has been introduced in the [fol. 271] case to show that their recommendations as made to the Public Utilities Commission are other than fair and reasonable.

2. We wish to deny that any facts or evidence of any kind has been introduced in this case to show that the electrical plant located at Hillsboro, Ohio, has been anything but efficiently operated, or that the plant has been uneconomically planned and constructed—at least, since the respondent has owned and been directly in charge of the operations of said plant and property. It is true, however, that the respondent has been put to considerable expense in making certain changes in its plant and property, which has added considerable to its value and enabled it to adequately serve the public.

3. We wish to deny that any facts or evidence of any kind has been introduced in this case to show that the public is being penalized by extortionate rates, for the omissions of the administration of this particular utility property.

4. We wish to deny that facts or evidence of any kind has been introduced in this case to show that The Ohio Utilities Company, as a utility, has neglected to make reasonable effort to attract new business and encourage the greater use of electrical current in the village of Hillsboro, Ohio.

5. We believe that should The Ohio Utilities Company comply with the order of the Public Utilities Commission under date of December 12, 1922, and put the reduced rates into effect, as ordered therein, the gross earnings of the electrical department could be

[fol. 272] approximated or estimated to be $50,454.84 for a 12 months' period of operation—and not $53,563.00 as stated in the order of the Public Utilities Commission hereinbefore referred to, at least the statement of 27 months' past operation ended November 30, 1922, shows this to be the fact.

6. Considering the past 27 months' operations ended November 30, 1922, we know that the reasonable operating expenses (including an allowance for taxes) could be approximated or estimated at $40,162.68 covering a period of 12 months' operations—and not $37,608.00, as stated in the order of the Public Utilities Commission under date of December 12, 1922. No evidence of any kind or facts have been introduced in this case to show that the plant and property of The Ohio Utilities Company used and useful for the purpose of furnishing electrical service to the Hillsboro public has been other than efficiently and intelligently operated. It is true that the operating expenses may vary from time to time, particularly on account of the fluctuation in fuel costs.

7. Considering all the facts and evidence introduced in this case The Ohio Utilities Company should be allowed to earn 8% per annum on a property value of $154,656.00 or $12,372.48—and not 6% on a property value of $145,055.00 or $8,703.00 as stated in the order of the Public Utilities Commission, under date of December 12, 1922. The reduction in the fair value of this property has been arbitrarily made by the Commission and is not supported or substantiated by recommendations made to the Public Utilities Commission by their own investigators or by their own chief engineer. [fol. 273] Former precedent already established in like cases by this and others commissions allows the utility to earn 8% as a reasonable return.

8. That a reasonable annual allowance for depreciation upon said property should be $7,732.80 or 5% on the property value of $154,656.00—and not $7,252.00, being 5% on the property value of $145,055.00.

9. In fact after carefully studying the order of the Public Utilities Commission of Ohio, under date of December 12, 1922, in Advanced Utility Rate Proceeding No. 21, we are at a loss to understand how they could arrive at the figures contained therein, had they given the slightest consideration to the many facts, figures and the evidence before them in this case and we can only draw the final conclusion that their decision in the matter has been arbitrarily made without due consideration of the testimony and evidence.

In this application for rehearing we wish to submit for record a statement covering operations of the gas department of The Ohio Utilities Company—Hillsboro Division, for the past 11 months, ended November 30, 1922, as Exhibit "G."

EXHIBIT "G" TO APPLICATION

Statement Gross Earnings and Operating Expenses, Gas Department, Hillsboro Division, the Ohio Utilities Company, 11 Months Ended November 30, 1922, Operating under P. U. C. O. No. 2, Effective August 26, 1920

(Made by Accounting Department of the Ohio Utilities Company)

Gross Earnings:	
Gas sales	$11,712.75
Total gross earnings	$11,712.75
[fol. 274] Operating Expenses:	
Production	$10,357.94
Distribution	390.77
General	1,642.32
Taxes (estimated)	882.75
Total operating expenses	$13,273.78
Deficit	$1,561.03
Interest on Investment and Depreciation Allowance:	
13% on approximately $70,000 (11 months)	8,341.63
Total deficit	9,902.66

The above figures shown by Exhibit "G" speak loudly and plainly for themselves. They need no explanation. It is an established fact that The Ohio Utilities Company, the respondent in this case, is and has in the past furnished a gas service in the village of Hillsboro at a considerable loss of money—and should today be collecting per thousand cubic feet of gas sold and amount in excess of $3.25—instead of $2.00 per thousand cubic feet.

(NOTE—See following Exhibits "H," "I," "J" and "K.")

EXHIBIT H TO APPLICATION

November 18, 1920.

Mr. L. G. White, Chief Engineer the Public Utilities Commission of Ohio, Columbus, Ohio.

DEAR SIR: I have investigated the above matter at Hillsboro and at the company office in Columbus. I will submit two reports, one for the Artificial Gas and one for the Electric Service.

[fol. 275] Artificial Gas Rate

The company files its P. O. C. O. No. 3, Artificial Gas Rates, to become effective August 26, 1920, increasing the rate per 1000 cubic

feet of gas from $1.35 to $2.00. The city protested the schedule and the company elected to charge the new rate, $2.00 per 1000 cubic feet, filing satisfactory bond.

For the 12 months ending September 30, 1920, I find the actual operating expenses (not including plant replacements) were:

Production:		
Superintendence and labor at works....	$3,369.20	
Fuel under retorts coal carbonized.....	6,978.70	
Miscel. supplies and expenses	587.39	
Repairs at work	718.62	
		$11,653.91
Distribution:		
Distribution labor	1.30	
Work on consumers' premises.....	5.48	
Repairs to maintenance and service....	22.22	
Meter maintenance	16.30	
Miscel. distribution repairs	23.11	
		68.41
General:		
Salaries officers and miscel. ex.		992.97
Total actual operating and small maintenance expenses		$12,715.29

TAXES.—I find the taxes for the 12 months' period chargeable to the gas department were $963.00.

[fol. 276] Plant Renewals or Replacements

During the past few years the company has renewed the retorts and benches, the scrubbers and purifier, etc. Part of these costs are chargeable to capital account and the balance should be charged against depreciation or contingent fund which is provided for in this cost of service analysis.

These renewal and replacement charges amounting to $755.98 for six months or $1,534.00 per year are outlined in detail in Company Exhibit "C."

Amount for Figuring Rate of Return

The appraisal of the gas property as of March 1, 1917, was $60,000.00.

The net additions and betterments properly chargeable to capital account to July 1, 1920 amount to $5,532.00, which, added to the above $60,000.00, gives us $65,532.00 valuation on which to calculate the rate of return to which the company is entitled.

Depreciation or Contingent Fund

This fund should be considered in the cost of service analysis to provide funds for renewals and replacements of plant and equipment. This fund should be sufficient to pay for the retort and bench renewals occurring every few years and also to provide for replacements of the longer lived items such as scrubbers, purifiers, holder, mains, services, meters, buildings, etc.

In my opinion 5 per cent of the valuation amount is fair allowance for this fund.

[fol. 277] Cost of Service Past 12 Months

From the foregoing we have the following cost of service for the 12 months ending September 30, 1920.

Operating and minor maintenance expenses	$12,715.29
Taxes	963.60
8% return on $65,532.00	5,242.56
5% Depreciation or Contingent Fund on $65,532.00..	3,276.60
Total	$22,198.05
Deduct for sale of coke and tar.....	890.42
Net cost of service	$21,307.63

Quantity of gas sold in 12 months' period, 6,145,000 cu. ft.

Rate necessary to produce above cost of service, $3.46 per 1000 cu. ft.

New Gas Holder

When a new gas holder is built the capital account will be increased about $7,000.00 and about $3,500.00 will have to be charged to the Depreciation or Contingent Fund and pro-rated over a period of years.

The $7,000.00 additional capital account charge on 8% basis amounts to $560.00 per year, which would increase the above "Rate necessary to produce cost of service" by 9 cents.

The pro-rating over a period of years of the $3,500.00 charge is, in my opinion, provided for in the above depreciation allowance of $3,276.60 per year.

In considering the above cost of service per year I wish to call attention to conditions obtaining the past year which tend to make operating costs higher than they probably will be for the next year. [fol. 278] The gas holder has leaked during the entire past year and excessively the past few months, making it necessary to produce more gas than will be required after the new holder is installed.

The capacity of the present holder is not sufficient for the most economical manufacture of gas at Hillsboro. Uniform temperatures are not maintained in the retorts, causing excessive wear of the benches and retorts.

The quality of coal has been very poor, requiring larger quantities to be used than probably will be required next year. The coke revenues production and quality should also increase with better grade of coal.

With better and uninterrupted service the number of gas consumers should be increased next year.

From my investigation I find that the rate of $2.00 per 1,000 cubic feet of artificial gas as filed in P. U. C. O. No. 3 schedule is not excessive.

Yours very truly, Thomas D. Pierce, Appraisal Engineer.
TDP/DDM.

EXHIBIT "I" TO APPLICATION

The Commission having heretofore, by order duly made herein, suspended the going into effect, among other rates, of the proposed increased rates for artificial gas service at Hillsboro, Ohio, contained in a schedule disignated P. U. C. O. No. 3, filed by The Ohio Utilities Company to become effective August 26, 1920, (which proposed rates were thereafter collected by said respondent under authority of its undertaking duly filed herein), and entered upon a hearing [fol. 279] and investigation to determine the propriety of said proposed increased rates:

This day, after full hearing, due notice of the time and place of which was given pursuant to law, said matter came on for consideration upon the evidence submitted at said hearing and the report of this Commission's engineers and experts of their independent investigation and inquiry into said matter.

Upon consideration whereof, and being fully advised in the premises the Commission finds, taking into consideration the value of respondent's property, used and useful for the convenience of the public in the furnishing of said service, the cost of furnishing said service and the necessity for making reservations from income for depreciation and contingencies, that the proposed rates and charges for the furnishing of artificial gas service in the city of Hillsboro, Ohio, set forth and contained in the schedule, designated P. U. C. O. No. 3, of the Ohio Utilities Company, are not unjust, unreasonable or excessive, and will not yield said company a greater rate of return than it is entitled to earn upon its said property. It is, therefore,

Ordered, that the order, heretofore made and entered herein, suspending the going into effect of the rates contained in said proposed schedule of said The Ohio Utilities Company be, and hereby it is rescinded.

And the Commission coming now to consider the matter of the furnishing of said artificial gas service by said The Ohio Utilities Company in the said city of Hillsboro, Ohio, and having hereinbefore found and determined to be not unreasonable, unjust or excessive, the rates and charges for said service proposed and established [fol. 280] by said The Ohio Utilities Company, and it appearing

from the complaints of several residents and citizens of Hillsboro, Ohio, and the report of the engineer of this Commission detailed to investigate such complaints, that said company discontinued the operation of its facilities for the furnishing of artificial gas service in said city of Hillsboro, Ohio, and the furnishing of such service to its consumers and the public upon the fourteenth day of October, 1920, and has not since nor to this date resumed such operation and the furnishing of said service, and its appearing further that said service may be resumed upon either the repairing of its present gas holder in said city of Hillsboro, Ohio, or the substitution therefor of a new holder, and it appearing further that said operations were abandoned and the furnishing of said service discontinued without application to, or authority from this Commission as provided by Section 504-2-3, General Code of Ohio.

The Commission, from the said complaints and the aforesaid report of its engineer detailed to investigate the same, further finds that the interests of the public have been injuriously affected by the said unlawful discontinuance of said service and abandonment of said facilities, and that the public welfare requires the immediate resumption of said operations and restoration of said service. It is, therefore, further

Ordered, that said The Ohio Public Utilities Company be, and hereby it is notified, directed and required forthwith to resume the operation of its artificial gas plant and the furnishing of artificial gas [fol. 281] service to its consumers and the public in the city of Hillsboro, Ohio, and to make all needful repairs or replacements necessary to enable it to furnish an adequate service.

EXHIBIT "J" TO APPLICATION

November 22nd, 1920.

To the Mayor and Council of the Village of Hillsboro, Hillsboro, Ohio.

GENTLEMEN: The Public Utilities Commission of Ohio has entered an order that the rates heretofore filed with it for gas service at Hillsboro is not unreasonable and will not yield a return greater than that to which we are entitled.

Our boa-d of directors has decided to in*t*sall a new holder and resume the manufacture of gas at the earliest possible date, which will be sixty (60) to ninety (90) days from the present time, depending somewhat upon the weather conditions.

We wish to state, however, that upon completion of this work and the ascertainment of the cost of gas fuel at the time we resume the gas business will depend the rates that will be filed with the Commission as a schedule for service. The rate of $2.00 per thousand cubic feet recently filed does not produce a return upon the money invested, but barely produces the cost of production with-

out interest, or depreciation under present prices for coal and supplies. If these should decrease to a point that the profits will take care of the above items the rate will not be increased. If it is necessary to increase the rate so as to take care of these items, we wish to now [fol. 282] advise you that the rates will be increased so that the officials and citizens of Hillsboro will be advised in advance that the amount to be paid by them will cover the cost of production plus eight per cent. (8%) net return, and five per cent. (5%) depreciation on the value of the property used and useful in the gas business in Hillsboro.

Yours very truly, (Signed) J. C. Martin, Secretary-Treasurer.
JCM-Mc.

EXHIBIT "K" TO APPLICATION

November 22, 1920.

To the Public Utilities Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

Re: In the Matter of the Proposed Increased Rates of the Ohio Utilities Company for Gas and Electric Service, Filed to Become Effective August 26, 1920, Advanced Utility Rate Proceeding No. 21

Your communication of the 19th, enclosing copy of order of the Commission with reference to the gas situation at Hillsboro, Ohio, received, and in answer thereto I will say that it will be necessary for us, before resuming operation of the gas plant at that point, to install a new gas holder for receiving and storage of the gas supply from the gas-making machinery.

We are in receipt of a proposition for the installation of this holder from one firm and have the promise of a written proposal from another not later than tomorrow, November 23rd. Also, we have asked for a guarantee as to the date of delivery and complete construction. So soon as these proposals are received we will contract for a gas [fol. 283] holder, having regard both to the cost and as to the promptness of delivery.

So soon as the holder is installed we will resume service. The rate, however, that will be filed in the future will depend somewhat on the increased cost and the cost of material at that time.

Very truly yours, (Signed) J. C. Martin, Secretary-Treasurer.
JCM-Mc.

After having considered the final order of the Public Utilities Commission under date of December 12, 1922, and the figures contained therein, and the figures and statements which we, the respondent in this case, have submitted as a part of this application for rehearing, we wish to present to the Commission the result of ap-

plying the figures fixed by the Commission in its original valuation of said property, plus the additions thereto, as to earnings sufficient to produce depreciation and a return thereon:

Under date of October 23, 1917, the Public Utilities Commission of Ohio, by their order No. 1176, authorized the purchase of the plant, property and assets of The Hillsboro Light and Fuel Company, Hillsboro, Ohio, by The Ohio Utilities Company, and ordered and authorized the issuing by said The Ohio Utilities Company in payment therefor the sum of one hundred and twenty thousand ($120,000.00) dollars par value of its six (6) per cent first mortgage bonds,—forty-four thousand ($44,000.00) dollars par value of its seven (7) per cent. preferred stock and twenty-two thousand two hundred ($22,200.00) dollars par value of its common stock,—or an [fol. 284] aggregate issue of securities totaling one hundred and eighty-six thousand two hundred ($186,200 00) dollars par value to purchase the plant, property and assets,—comprising an electrical department and an artificial gas department. Since the date of October 23, 1917, from time to time, as ordered and authorized by the Public Utilities Commission of Ohio additional securities have been issued as against the expenditures made for extensions and improvements and additions and betterments to the electric and gas property of The Ohio Utilities Company, located in the Village of Hillsboro, until as of December 12, 1922, there is an aggregate issue of securities, or securities in process of issue in an amount approximating $225,000.00.

If, the order of the Public Utilities Commission of Ohio, under date of December 12, 1922, should be complied with as to electrical rates,—as shown by Exhibit "D" herein the net earnings would be $10,292.16 from the electric department of this property for a theoretical period of 12 months.

If, the respondent in this case is to continue to sell artificial gas in the Village of Hillsboro, Ohio, at a rate of $2.00 per thousand cubic feet delivered to the consumer, referring to Exhibit "G" herein and based on 11 months operation just past and ended November 30, 1922, and with an estimate of operation for the month of December, 1922, the net deficit would be $1,702.94 from the gas department of this property for a period of 12 months.

Considering these figures the actual net earnings derived from the combined operations of the electric department and the gas department of this property would be $8,589.22.

[fol. 285] These net earnings are not sufficient to produce an allowance for depreciation of 5% on the property value of $225,000.00,—they only produce an amount as an allowance for depreciation of 3.81% on this property value.

There is no amount remaining to pay a return either reasonable or unreasonable upon the respondent's property.

This is a concrete example of the conditions which amounts to a confiscation of the respondent's property, if it continues to exist.

Wherefore, your applicant prays that a rehearing of this cause may be granted and that upon the rehearing, said Commission will

vacate and so modify its former order heretofore made on December 12, 1922, in Advanced Utility Rate Proceeding No. 21, as to permit and direct the taking effect and the continuance thereof of said Schedule P. U. C. O. No. 3, effective August 26, 1920, covering rates for electrical service furnished to the Village of Hillsboro, Ohio, and for such other relief as this applicant may be entitled to.

The Ohio Utilities Company, By J. C. Martin, Vice President. By F. Madison, Secretary.

[Duly verified.]

[fol. 286] BEFORE PUBLIC UTILITIES COMMISSION

ENTRY DENYING APPLICATION FOR REHEARING—Dated January 10, 1923.

This day this matter came on for further consideration upon the application of the respondent, The Ohio Utilities Company, asking a rehearing of the matter and things determined by the finding and order made and entered herein upon the 12th day of December, 1923, for the reasons and upon the grounds set forth in said application.

The Commission, being fully advised in the premises, finds that sufficient cause has not been made to appear for such rehearing. It is, therefore,

Ordered, that the application of The Ohio Utilities Company for a rehearing of the matters and things determined by the finding and order, made and entered herein as of date December 12th, 1922, upon the grounds and for the reasons set forth therein, be, and hereby the same is denied.

To which order of the Commission denying its said application for a rehearing, upon the grounds and for the reasons set forth therein, of the matters and things determined by the finding and order, made and *entertained* herein upon the 12th day of December, 1922, said The Ohio Utilities Company then *expected* and here now excepts, and its exceptions here are noted of record.

[fol. 287] UNITED STATES OF AMERICA, ss:

SUPREME COURT OF OHIO

RETURN TO WRIT OF ERROR

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the Seal of said Supreme Court of Ohio, in the City of Columbus, this 23rd day of October, A. D. 1923.

Seba H. Miller, Clerk of the Supreme Court of Ohio. (Seal of the Supreme Court of the State of Ohio.)

[fol. 288] IN THE SUPREME COURT OF OHIO

[Title omitted]

PETITION FOR WRIT OF ERROR AND ORDER ALLOWING SAME—Filed Oct. 11, 1923

To the Honorable C. T. Marshall, Chief Justice of the Supreme Court of the State of Ohio:

The Ohio Utilities Company, plaintiff in error, shows by this petition to this Honorable Court, that in the records proceedings and decisions, in the Supreme Court of the State of Ohio, the same being the highest court of the said State in which a decision could be had in this unit, a manifest error has occurred, greatly to the damage of said the Ohio Utilities Company.

That, as appears in the record and proceedings there was drawn in question the validity of an authority of the Public Utilities Commission, under and by virtue of Section- 614-23 of the General Code of Ohio, to vacate and set aside a certain rate schedule of the Ohio Utilities Company, plaintiff in error, fixing rates for the furnishing of electric service to the Village of Hillsboro, Ohio, by the Ohio Utilities Company, and known as P. U. C. O. No. 3, and filed by [fol. 289] plaintiff in error with said Public Utilities Commission of Ohio on the 27th day of July, 1920, under and by virtue of Section-614-20 of the General Code of Ohio, and in substituting for said Schedule P. U. C. O. No. 3 certain rates fixed and determined by the Public Utilities Commission of Ohio lower than the rates set forth in P. U. C. O. No. 3 on the ground of the action of the Public Utilities Commission and said authority being repugnant to the constitution of the United States and particularly to the 14h Amendment thereto.

The said the Ohio Utilities Company further say that in this cause on the 4 day of October, 1923, final judgment was rendered against your petitioner by the Supreme Court of the State of Ohio, that being the highest court of law or equity in the said State of Ohio, wherein it was adjudged that the Public Utilities Commission of Ohio did not err in vacating and setting aside the aforesaid P. U. C. O. No. 3, and in substituting therefor the said certain rates fixed and determined by the Public Utilities Commission of Ohio, lower than those contained in P. U. C. O. No. 3, as aforesaid and in exercising said authority under and by virtue of Section 614-23 of the General Code of Ohio, which provides for "* * * due re-

gard among other things, to the value of all the property of the public utility actually used and useful for the convenience of the public * * *"; and said Supreme Court of the State of Ohio affirmed said order of the Public Utilities Commission of Ohio as a valid exercise of authority under Section 614-23 of the General Code of Ohio, and held that said authority was not repugnant to Articles XIV, Section 1, of the constitution of the United States which declares:

Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

all of which to the prejudice of the Ohio Utilities Company fully appears in the records and proceedings of the case and is specifically set forth in the assignment of errors filed herewith.

[fol. 290] Wherefore, your petitioner prays for an allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Ohio and the judges thereof, to the end that the record in this case may be removed into the Supreme Court of the United States and the errors complained of by your petitioner may be examined and corrected, and said judgment reversed, and said cause remanded as provided by law; and that your petitioner may have such other and further relief in the premises as may be just, and your petitioner will ever pray.

The Ohio Utilities Company, By T. S. Hogan, Its Attorneys.

The writ of error as prayed in the foregoing petition hereby allowed this 11th day of October, 1923, and the writ of error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of $1,000.00.

Dated at the City of Columbus, Ohio, this 11th day of Oct, 1923.

C. T. Marshall, Chief Justice of the Supreme Court of the State of Ohio.

[fol. 291] [File endorsement omitted.]

[fol. 292] IN THE SUPREME COURT OF OHIO

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Oct. 11, 1923

Now comes The Ohio Utilities Company of Ohio, in connection with its petition for writ of error herein and respectfully submits that in the record, proceedings, decisions and final judgment of the Supreme Court of the State of Ohio in the above entitled case there is manifest error in this, to-wit:

First. The Supreme Court of the State of Ohio erred in affirming the action of the Public Utilities Commission of Ohio in modifying and setting aside the rates and charges of The Ohio Utilities Company, plaintiff in error, as fixed and prescribed in a certain schedule of rates known and designed as P. U. C. O. No. 3, filed by plaintiff in error with the Public Utilities Commission of Ohio on the 27th day of July, 1920, and effective on the 27th day of August, 1920, said schedule being designated in the pleadings and record in this cause as P. U. C. O. No. 3 and filed and effective, and by virtue of Section 614-20 of the General Code of Ohio, and in substituting therefor certain rates and charges fixed and determined by the Public Utilities Commission of Ohio, under and by virtue of Section 614-23 of the General Code of Ohio, said substituted rates being lower [fol. 293] than the rates set forth in said P. U. C. O. No. 3, and not fixed, according to the language of the statutes "with due regard among other things, to the value of all of the property of the public utility actually used and useful for the convenience of the public," and that said substituted and designated rates of the Public Utilities Commission of Ohio did and do not produce a fair and adequate rate of return upon the value of the property of the plaintiff in error used and useful in the service for which said rates were named.

Second. The judgment of the Supreme Court of the State of Ohio, in this cause is in contravention of Section 1 of Article 14, being the 14th Amendment to the constitution of the United States, which requires:

Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Third. The Supreme Court of the State of Ohio erred in giving judgment for the Public Utilities Commission of Ohio in said cause.

Fourth. The Supreme Court of the State of Ohio erred in refusing to give judgment for The Ohio Utilities Company, plaintiff in error, in said cause.

Fifth. The Supreme Court of the State of Ohio erred in holding that the authority exercised by the defendant in error, The Public Utilities Commission of Ohio, under and by virtue of Section 614-23, of the General Code of Ohio, in vacating and setting aside a certain rate schedule designated and known as P. U. C. O. No. 3, which said order was and is the certain rate schedule of The Ohio Utilities Company, plaintiff in error, fixing rates and charges for the furnishing of electric service to the Village of Hillsboro, Ohio, by The Ohio Utilities Company, and filed by plaintiff in error with said Public Utilities Commission of Ohio, under and by virtue of Section 614-20, of the General Code of Ohio, and in substituting for said order certain rates and charges fixed and determined by the Public Utilities Commission of Ohio, lower than the rates and charges set forth in P. U. C. O. No. 3, was not in contravention of the provisions of the [fol. 294] 14th Amendment to the constitution of the United States and in holding that the said action of said Public Utilities Commis-

sion of Ohio, did not deprive The Ohio Utilities Company, plaintiff in error, of its property without due process of law and in holding that said action did not deny to the plaintiff in error, The Ohio Utilities Company, the equal protection of the laws.

Sixth. The Supreme Court of the State of Ohio erred in refusing to reverse the action of the Public Utilities Commission of Ohio in vacating and setting aside P. U. C. O. #3, filed July 27th, 1920, and in substituting therefor certain rates and charges lower than those contained in P. U. C. O. #3.

Seventh. Supreme Court of the State of Ohio erred in holding that the authority exercised by the Public Utilities Commission of Ohio in vacating and setting aside the following Schedule (Copy of Schedule P. U. C. O. No. 3):

P. U. C. O. #3

Original Sheet No. 7

The Ohio Utilities Company (Hillsboro Division), Hillsboro, Ohio

Schedule A

Residence Lighting Rate

15¢ per Kilowatt Hour for first 200 Kilowatt hours, net.
12¢ per Kilowatt Hour for all over 200 Kilowatt hours, net.
Minimum charge, $1.00 per month.

This schedule covers the use of electric energy for the lighting of residences and for small domestic power purposes such as vacuum cleaners, washing machines, house pumps, fans and for small heating devices, under a contract for a period of not less than one year.

Schedule B

Commercial Lighting Rate

Rates same as Schedule "A."

Covers the use of electric energy for lighting and small power purposes in stores, shops, factories, clubs, churches, schools, etc., under a contract for a period of not less than one year.

Issued July 27, 1920. Effective August 26, 1920.

[fol. 295] and in substituting therefor the following as the schedule of rates to be charged by the plaintiff in error:

PUBLIC UTILITIES COMMISSION OF OHIO

Order Fixing Rates

Columbus, Ohio, Dec. 12, 1920.

* * * That just and reasonable rates and charges for the furnishing of the aforesaid classes of service in said village are:

Residence and Commercial Lighting

12¢ per K. W. H. for the first 200 K. W. H. net.
10¢ per K. W. H. for all over 200 K. W. H. net.

was not in contravention of the 14th Amendment to the constitution of the United States, in that it deprives The Ohio Utilities Company of a fair return of income on the value of its property used and useful in the furnishing of Electric Service to the Village of Hillsboro, Ohio.

Wherefore, your petitioner prays for an allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Ohio and the judges thereof, to the end that the record in this case may be removed into the Supreme Court of the United States and the errors complained of by your petitioner may be examined and corrected, and said judgment reversed, and said cause remanded as provided by law; and that your petitioner may have such other and further relief in the premises as may be just, and your petitioner will ever pray.

T. S. Hogan, Attorneys for Plaintiff in Error.

[fol. 296] [File endorsement omitted.]

[fol. 297] IN THE SUPREME COURT OF OHIO

[Title omitted]

ORDER ALLOWING WRIT—Filed Oct. 11, 1923

On this 11th day of October, 1923, the petition of The Ohio Utilities Company for a writ of error came on to be heard, and it appearing to the Court from the petition filed herein and from the record and proceedings filed therewith, that said application should be granted and that a transcript of the record, proceedings and papers, upon which the judgment of the court was rendered, properly certified, should be sent to the Supreme Court of the United States in accordance with the prayer of said petition, in order that such proceedings may be had as may be just and proper.

Now, therefore, it is ordered that the writ of error be allowed upon bond being furnished by said The Ohio Utilities Company,

conditioned according to law in the sum of $1,000.00, which is further to act as a supersedeas and that a true copy of the record, assignment of errors and all proceedings in the case in the Supreme Court of the State of Ohio, shall be transmitted to the Supreme Court of the United States, duly certified according to law, in order that said court may inspect the same and take such action thereon as it deems proper according to law.

And thereupon said The Ohio Utilities Company having presented its bond and the same being found to be in accordance with this order, same is hereby approved.

C. T. Marshall, Chief Justice of the Supreme Court of the State of Ohio.

[fol. 298] [File endorsement omitted.]

[fol. 299] IN THE SUPREME COURT OF OHIO

[Title omitted]

WRIT OF ERROR—Filed Oct. 11, 1923

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Ohio, Greetings:

Whereas, in the record and proceedings and in the rendition of the judgment in the above entitled cause, which is now before you, or some of you, between The Ohio Utilities Company, plaintiff in error and the Public Utilities Commission of Ohio, defendant in error, your court being the highest court of said State of Ohio, having jurisdiction of the cause, there was drawn in question the validity of an authority exercised under the State of Ohio on the ground of its being repugnant to the constitution of the United States, and the decision is in favor of its validity, and whereas there is manifest error in said judgment to the great damage of The Ohio Utilities Company and whereas we are willing that if there is error it should be duly corrected, we commend you therefore, if judgment be given therein that you send, under seal of your court, the record and proceedings of said cause to the Supreme Court of the United States, [fol. 300] together with this writ within such time as may be necessary in order that you may have the same at Washington on the 10 day of November, 1923 in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid may be then inspected by the Supreme Court of the United States and that said Supreme Court of the United States may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Wm. Howard Taft, Chief Justice of the Supreme Court of the United States, the 11th day of October, 1923.

B. E. Dilley, Clerk of the United States District Court for the Southern District of Ohio, Eastern Division. [Seal of the United States District Court, Southern District of Ohio, Eastern Division.]

Allowed by C. T. Marshall, Chief Justice of the Supreme Court of the State of Ohio.

[fol. 301] [File endorsement omitted.]

[fol. 302] IN THE SUPREME COURT OF OHIO

[Title omitted]

CITATION—Filed Oct. 11, 1923; omitted in printing

[fol. 303] Copy of the above Citation received this 11 day of October, 1923, and the appearance of said Charles C. Marshall, George T. Poor and Frank B. Maullar, members of and composing the Public Utilities Commission of Ohio, is hereby entered.

C. C. Crabbe, Attorney General of the State of Ohio, Attorney for the Public Utilities Commission of Ohio.

[fol. 304] [File endorsement omitted.]

[fol. 305] IN THE SUPREME COURT OF OHIO

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed Oct. 11, 1923

The undersigned counsel for the respective parties in this cause hereby stipulate that the Clerk of the Supreme Court shall make a transcript of and shall certify and transmit the entire record in this cause, including all pleadings and proceedings in this cause, and the certified copy of the Docket and Journal entries in this Court.

By T. S. Hogan, Attorneys for the Ohio Utilities Company.

By C. C. Crabbe, Attorney General of Ohio, Attorney for the Public Utilities Commission of Ohio.

[fol. 306] [File endorsement omitted.]

[fols. 307 & 308] In the Supreme Court of Ohio

[Title omitted]

Bond for $1,000.00—Approved and filed Oct. 13, 1923; omitted in printing

[File endorsement omitted.]

[fol. 309] Supreme Court of the State of Ohio

Docket and Journal Entries

(Minute Book No. 37, Page 225)

Number 17825

[Title omitted]

Action: Error to the Public Utilities Commission of Ohio.

Attorneys: J. C. Martin, Hogan, Hogan & Hogan, Columbus, Ohio, for Plaintiff in Error; C. C. Crabbe, Attorney General; E. E. Corn, Granville Barrere, Burch D. Huggins, Columbus, Ohio, for Defendant in Error.

Transcript of Docket Entries

Memoranda of Pleadings, etc., Filed, Writs Issued, Judgments, Orders, and Decrees

1923.

Jan. 23—Petition in Error and waiver of Summons filed.
" "—Motion for Stay of execution filed.
" 26—Proof of service of Motion filed.
Feb. 1—Entry filed.
" "—Motion by plaintiff for stay of execution allowed, upon the execution of an undertaking payable to the State of Ohio in the sum of $25,000.00 with surety to the satisfaction of the Clerk of the Supreme Court, conditional according to law. Marshall, C. J. Journal 29, page 359.
Feb. 7—Certified transcript of Docket and Journal entries. Original Papers, Testimony and Exhibits (1 Vol.) from Public Utilities Commission filed.
" "—All papers taken by Mr. Martin. Returned 2/15/23.
" 13—Motion by plaintiff for stay of execution allowed. Agreed entry. Journal 29, page 369.
" 19—Bond, $25,000.00 signed by plaintiff in error as principal and National Surety Company, 115 Broadway, New York, as surety, filed and approved.

Mar. 13—Motion by plaintiff to require Public Utilities Commission to transmit papers and complete transcript of evidence to Supreme Court and Proof of Service filed.
" 27—Motion by plaintiff to require Public Utilities Commission to transmit papers and complete transcript of evidence to the Supreme Court. Allowed as to any records and exhibits which were considered by the commission. Journal 29, page 401.
Mar. 29—Printed record filed.
" 31—Additional papers from Public Utilities Commission (reports) filed.
Apr. 2—Papers taken by E. E. Corn.
" 3—Additional papers taken by J. C. Martin. Returned 4/3/23.

[fol. 310]

Apr. 3—Plaintiff's printed brief filed.
" 20—Printer's receipted bill filed.
" 25—Papers taken by E. E. Corn Apr. 3rd returned.
" 28—Defendant's printed brief filed.
" 30—Proof of Service filed.
May 4—Plaintiff's printed reply briefs filed.
" 7—Proof of Service filed.
June 12—Order affirmed. Journal 29, page 467.
" 19—Application for rehearing filed.
July 27—Papers taken by E. E. Corn.
Oct. 4—Rehearing denied. Journal 29, page 518.
" 8—Mandate issued.
" "—Original papers sent to Public Utilities Commission.
" 11—Mandate recalled.
" "—Petition for writ of error filed.
" "—Assignment of errors filed.
" "—Order allowing writ filed.
" "—Writ of error filed.
" "—Citation filed.
" "—Stipulation as to transcript of record filed.
" 13—Bond (3 copies) filed.

Transcript of Journal Entries

1923.

Feb. 1— This day this cause came on to be heard on the motion of plaintiffs in error for an order to stay execution of the final order of the Public Utilities Commission of Ohio, herein complained of and was argued and submitted to the Court; on consideration whereof, being fully advised in the premises, it is hereby ordered that the said motion be allowed, and it is therefore ordered and adjudged that said final order so made and entered against plaintiffs in error by said Commission on the 10th day of January, 1923, in "Advanced Utility Rate Proceeding

No. 21," before said Commission, entitled "In the matter of proposed increased rates of the Ohio Utilities Company for gas and electric service, filed to become effective August 26, 1920," be and the same hereby stayed until the future order of this Court, upon the plaintiff in error giving an undertaking payable to the State of Ohio in the sum of twenty-five thousand ($25,000.00) dollars, with surety to the satisfaction of the Clerk of this Court, conditioned according to law. And upon agreement of parties hereto and as further security to the patrons of the plaintiff in error;

It is hereby ordered that all monies collected by the plaintiff in error for service rendered beginning January 1, 1923, under its Hillsboro Division Schedule, P. U. C. O. No. 3, in excess of revenues that would be collected under the schedule prescribed in this cause by the Public Utilities Commission, be deposited on or before the 20th of each month for the services rendered the preceding month with the Hillsboro Bank and Savings Company of Hillsboro, Ohio, as Trustee, and that said fund so deposited to draw interest at not less than three per cent and be and remain deposited with and in the possession of said Trustee subject only to the final and direction of this Court in this case. Approved by J. C. Martin, Attorney for plaintiff in error. E. E. Corn, Attorney for defendant in error, and also representing the Attorneys for the Business Men's Club of Hillsboro, Ohio. Enter above by agreement of all parties in interest. C. T. [fol. 311] Marshall, Chief Justice.

1923.

Feb. 13— It is ordered by the Court that this motion be and the same is hereby allowed. Journal 29, page 369. (For entry see page 359 of this Journal.)

Mar. 27— It is ordered by the Court that this motion be and the same hereby is, allowed, as to any records and exhibits, if any, which were considered by the Public Utilities Commission. Journal 29, page 401.

June 12— This cause came on to be heard upon the transcript of the record of the Public Utilities Commission of Ohio, and was argued by counsel. On consideration whereof it is ordered and adjudged by this Court, that the order of said Public Utilities Commission of Ohio be, and the same is hereby affirmed; and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered that the defendant in error recover from the plaintiff in error its costs herein expended, taxed at $—. Ordered, That a special mandate be sent to the Public Utilities Commission of Ohio, to carry this judgment into execution. Journal 29, page 467.

Oct. 8— It is ordered by the Court that application for rehearing in this cause be, and the same hereby is overruled. Journal 29, page 518.

[fol. 312] SUPREME COURT, STATE OF OHIO, ss.

CERTIFICATE OF LODGMENT

I, Seba H. Miller, Clerk of said Court, do hereby certify that there was lodged with me as said Clerk on October 11, 1923, in the matter of The Ohio Utilities Company, a corporation organized and existing under the laws of the State of Ohio, plaintiff in error, versus The Public Utilities Commission of Ohio, defendants in error:

1. The original bond of which a copy is herein set forth.

2. Two copies of the writ of error as herein set forth, one for the defendant in error and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Columbus, Ohio this October 23rd, 1923.

Seba H. Miller, Clerk of the Supreme Court of Ohio. (Seal the Supreme Court of the State of Ohio.)

[fol. 313] STATE OF OHIO,
City of Columbus, ss:

SUPREME COURT OF THE STATE OF OHIO

[Title omitted]

CLERK'S CERTIFICATE

I, Seba H. Miller, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing petition for writ of error, assignment of errors, order allowing writ of error, writ of error, citation to defendant in error and his entry of appearance, and stipulation as to transcript of record are the original papers filed in this Court in the above entitled cause; that the copy of the bond hereto attached is a true copy of the bond filed in said cause; that the printed copy of the record attached hereto is a true copy of the record filed in said cause; that the foregoing transcript of docket and journal entries is truly taken and correctly copied from the records of said Court; and that a duly certified copy of the opinion rendered in said cause is hereto attached.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Supreme Court of Ohio, this 23rd day of October, A. D. 1923.

Seba H. Miller, Clerk of the Supreme Court of Ohio. (Seal the Supreme Court of the State of Ohio.)

[fol. 314] IN THE SUPREME COURT OF OHIO

(No. 17825. Decided June 12, 1923)

[Title omitted]

Error to the Public Utilities Commission

Mr. J. C. Martin, for plaintiff in error.

Mr. C. C. Crabbe, attorney general; Mr. E. E. Corn; Mr. Granville Barrere, and Mr. Burch D. Huggins, for defendant in error.

PER CURIAM OPINION

By the COURT: This proceeding comes into court upon error to the Public Utilities Commission of Ohio. The facts incident to the solution of the problem presented are as follows:

The Ohio Utilities Company, a corporation organized and existing under the laws of the state of Ohio, is engaged in the business of manufacturing and selling gas and electricity in the village of Hillsboro, Highland County. In the summer of 1920 the Hillsboro Business Men's Association filed a protest with the Public Utilities Commission against rates that had theretofore been filed by the Ohio Utilities Company, one for gas service, known as No. 2, and the other for electric service, known as No. 3, such schedules being effective August 26, 1920. Upon the filing of this protest, the schedules were suspended, but were afterward put in force upon the utilities company filing a bond with the commission. On July 5, 1921, the Public Utilities Commission entered its order and findings, as to the rate for electric service, lower than the rate schedule theretofore in force. Later a rehearing was granted by the commission, and on January 10, 1923, the final order and decision was made by [fol. 315] the Public Utilities Commission, fixing the rate for residence and commercial lighting at 12 cents per kilowatt hour for the first 200 kilowatt hours per month net, 10 cents per kilowatt hour for all over 200 kilowatt hours per month net, and it was further ordered that the Ohio Utilities Company refund in cash or by credit upon current bills by the 10th of June, 1923, any difference between these rates and the charges imposed upon its consumers from and after the 26th of August, 1920, to all of which orders, acts and proceedings of the Public Utilities Commission the Ohio Utilities Company at the time excepted. Upon denial of an application for a rehearing these proceedings in error in this court were prosecuted.

There are 12 grounds of error set forth, but the same may be generalized under the head that the decision and order of the Public Utilities Commission are contrary to law and contrary to the manifest weight of the evidence.

In determining this question, this court is to be guided by the rule laid down in the case of Village of St. Clairsville v. Pub. Util. Comm., 102 Ohio St., 574, at page 583, 132 N. E., 151, at page 153, in the following language:

"Let us next inquire whether the finding and order are against the weight of the evidence. On this point the inquiry should not be to determine whether there is a scintilla of evidence to support the finding of the commission; but, on the contrary, we are of the opinion that this court should examine the record with a view of [fol. 316] determining whether the findings of the commission on the facts are reasonably supported by the evidence adduced at the hearing. Inasmuch as this is the first review of the evidence, the situation of this court in such matters in analogous to that of the Court of Appeals in weighing and reviewing the evidence in an error proceeding from the court of common pleas. Applying such analogy, the findings of the commission should not be disturbed unless they are so manifestly against the weight of the evidence, and so clearly unsupported by it, as to show misapprehension, or mistake, or willful disregard of duty. This court has not had the opportunity of observing the demeanor of the witnesses, and is therefore not as competent to weigh the evidence as the commission should be."

And attention is called to the further announcement of this court, to be found in the first proposition of the syllabus of Hocking Valley Ry. Co. v. Pub. Util. Comm., 92 Ohio St., 362, 110 N. E., 952:

"This court will not substitute its judgment for that of an administrative board, created pursuant to an act of the Legislature, as to matters within its province. Before the court will interfere with an order of the railway commission, or its successors, it must appear from a consideration of the record that the action of the commission was unlawful or unreasonable."

Applying these principles heretofore announced by this court to the record in the case at bar, it is proper for us to state at the outset that we are particularly impressed with the very thorough manner in which the Public Utilities Commission tried, considered, and [fol. 317] announced its conclusion in the instant case. There was not only the original hearing, but the rehearing, the testimony of the witnesses, the examination by the commission's experts, assisted by the exhaustive arguments, briefs and research of counsel.

It is not necessary and would not be profitable to incorporate in this opinion a detailed recital or discussion of the evidence in the record, the same being too voluminous. Sufficient is it to say that it is composed of the testimony of the witnesses offered by the plaintiff in error, the exhibits and the result of the research of the experts and testimony of the witnesses called for cross-examination by the protestant, the Business Men's Association of the village of Hillsboro.

The case of the protestant was not so much made upon its own testimony as upon the cross-examination of the witnesses called by the plaintiff in error, as well as by the analysis of the figures submitted.

Now the gist of the finding of the Public Utilities Commission, omitting its conclusions as to figures and values, is:

"That, from its said investigation aforesaid, it is apparent that this plant has been uneconomically planned and constructed, in many regards inefficiently operated, and the service conducted without that regard for attracting new business and encouraging the greater use of the product which would reflect the saving per unit incident to increased volume of output, recognized as a basic principle in the conduct of commercial enterprises."

[fol. 318] Applying that doctrine to the conclusion that the Public Utilities Commission reached—that the original plant as purchased by the plaintiff in error required heavy expenditures to make it at all efficient, and that the public should not be penalized for the omissions of the administrator of the company's affairs—the actual finding of the commission was that P. U. C. O. No. 3, providing for a 15-cent per kilowatt hour rate for the first 200 kilowatt hours net, etc., was unjust, unreasonable, and unlawful, and that the following rates and charges were just and reasonable:

"Residence and commercial lighting: 12 cents per k. w. h. for the first 200 k. w. h. per month net; 10 cents per k. w. h. for all over 200 k. w. h. per month net.

"Private garage automobile charging: Minimum bill, $1.00 per month net."

It is very plausibly argued by plaintiff in error that from an analysis of the figures submitted in the report of the experts of the commission the rates provided for in order No. 3 are just and reasonable; but it must be understood that in reaching the conclusions it did the commission gave consideration not only to the figures submitted by the experts, and what the property had been able to earn in its past; but also to what under a proper management and economic handling would be a just and reasonable rate for the commodity offered by the plaintiff in error, considering its possibilities in the future.

The commission heard the witnesses, observed their demeanor upon [fol. 319] the witness stand, examined the briefs of counsel, and heard at length their oral arguments.

Was this finding, therefore, manifestly against the weight of the evidence and contrary to law? While the commission is not a court, it exercises quasi judicial functions, and while its conclusions are not to be regarded as judgments, but as orders and regulations, yet it must be conceded that the exercise of a sound discretion in the consideration of evidence, the weight to be given it, and the justness of conclusions to be drawn from the facts shown by a record submitted to the commission, is within the purview of its powers.

The fact that the recommendations made by the experts of the

commission were not followed in full would not justify a reversal, as testimony of such experts is to be regarded the same as that of any other witness, or means of gathering information, which may be weighed and considered and given such weight as to the commission seems proper.

The commission having given a hearing and rehearing, and exercised careful consideration for the rights of the plaintiff in error in the premises, we cannot say that its orders and conclusions are so manifestly against the weight of the evidence as to justify us in finding them unreasonable and unlawful.

The order of the Public Utilities Commission is therefore affirmed.

Order affirmed.

Marshall, C. J., Robinson, Jones, Matthias, Day and Allen, JJ., concur.

Wanamaker, J., not participating.

[fol. 320] STATE OF OHIO,
City of Columbus:

SUPREME COURT OF THE STATE OF OHIO OF THE TERM OF JANUARY, A. D. 1923

REPORTER'S CERTIFICATE

I, J. L. W. Henney, Reporter of the Supreme Court of Ohio, do hereby certify that the foregoing transcript, consisting of six (6) pages, constitutes a full, true and correct copy of the opinion of the Supreme Court of Ohio (concurred in by Marshall, C. J. Robinson, Jones, Mathias, Day and Allen, JJ.; Wanamaker, J., not participating) in case No. 17825, The Ohio Utilities Co. v. The Public Utilities Commission, as the original thereof appears on file and of record in this office, as of the date of this certificate.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said Supreme Court this 22nd day of October, A. D., 1923.

J. L. W. Henney, Reporter of the Supreme Court of Ohio.
(Seal The Supreme Court of the State of Ohio.)

Endorsed on cover: File No. 29,935. Ohio Supreme Court. Term No. 625. Ohio Utilities Company, plaintiff in error, vs. Public Utilities Commission of Ohio. Filed November 3d, 1923. File No. 29,935.

Stipulation and Addition to Record

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 210

THE OHIO UTILITIES COMPANY, PLAINTIFF IN ERROR,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO

FILED MARCH 20, 1934

(29,935)

(29,935)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 210

THE OHIO UTILITIES COMPANY, PLAINTIFF IN ERROR,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 28, 1924

[fol. 1] **IN SUPREME COURT OF OHIO**

No. 17825

THE OHIO UTILITIES COMPANY, Plaintiff in Error,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO, Defendant in Error

STIPULATION RE PRINTING OF SUPPLEMENTAL RECORD—Filed March 10, 1924

The undersigned, counsel for the respective parties in this cause, hereby stipulate that the Clerk of the Supreme Court of Ohio shall make and certify to the Supreme Court of the United States a transcript of the certificate of J. B. Dugan, acting Secretary of the Public Utilities Commission of Ohio, dated April 2nd, 1923, and the supplemental report of Thomas D. Pierce thereto attached. And it is further stipulated that the Clerk of the Supreme Court of Ohio shall certify under the seal of said court to the Supreme Court of the United States the original application for a rehearing in the Supreme Court of Ohio in the above styled cause, all of which are hereto attached.

It is understood by and between counsel hereto that the attached papers were omitted from the certificate of the Clerk of the Supreme Court of Ohio, dated October 23, 1923, (original Rec. p. 177) it being the intention of counsel hereto that upon certification of these papers to the Supreme Court of the United States at Washington, D. C., the clerk thereof shall print the same as a supplemental record in the above styled cause.

Timothy S. Hogan, Counsel for Ohio Utilities Company.
C. C. Crabbe, John W. Bricker, Counsel for the Public Utilities Commission of Ohio.

[fol. 2] IN SUPREME COURT OF OHIO

[Title omitted]

CLERK'S CERTIFICATE

I, Seba H. Miller, Clerk of the Supreme Court of the State of Ohio, do hereby certify that there is hereto attached a true copy of the original certificate of J. B. Dugan, acting Secretary of The Public Utilities Commission of Ohio, to the Supreme Court of Ohio, and filed in this court April 2nd, 1923, and that there is likewise attached hereto a true copy of the report of Thomas D. Pierce, appraisal engineer of The Public Utilities Commission of Ohio, dated July 31st,

1922; that said original certificate of J. B. Dugan with said original report of Thomas D. Pierce were filed in this court pursuant to an order of the Supreme Court of Ohio, and that the same constitute a part of the record in this cause in the Supreme Court of the State of Ohio.

I further certify that hereto attached is the original application for rehearing filed in this court in this cause on the 19th day of June, 1923.

I further certify that the copy of said certificate of the said J. B. [fol. 3] Dugan, the copy of the report of the said Thomas D. Pierce and the original application for rehearing were omitted from the record and proceedings in this cause sent under the seal of this court pursuant to the writ of error in this cause to the Supreme Court of the United States under my certificate dated the 23rd day of October, 1923.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the Supreme Court of Ohio, this 5th day of March, A. D. 1924.

Seba H. Miller, Clerk of the Supreme Court of Ohio. (Seal of the Supreme Court of the State of Ohio.)

[fol. 4] IN SUPREME COURT OF OHIO

[Title omitted]

CERTIFICATE OF J. B. DUGAN

The plaintiff in error, The Ohio Utilities Company, having heretofore filed its motion in the Supreme Court of Ohio to require the defendant in error, The Public Utilities Commission of Ohio, to transmit to said Court the following papers:

Report of Thomas D. Pierce, Appraisal Engineer, addressed to L. G. White, Chief Engineer, under date of Nov. 18th, 1920;

Report of Thomas D. Pierce, Appraisal Engineer, addressed to L. G. White, Chief Engineer, under date of April 14th, 1921;

Report of L. G. White, Chief Engineer, addressed to the Public Utilities Commission of Ohio under date of May 6th, 1921;

Supplemental Report of Thomas D. Pierce, Engineer, addressed to L. G. White, Chief Engineer, under date of July 31st, 1922;

pursuant to the entry of the said Supreme Court of Ohio, duly made upon said motion, there is herewith transmitted to the said Supreme Court of Ohio the reports above referred to, filed in the proceedings before said Commission, Numbered Advanced Utility Rate Proceeding No. 21, wherefrom this proceeding-in-error was instituted.

In witness whereof, I have hereunto set my hand and affixed the official seal of The Public Utilities Commission of Ohio, at Columbus, Ohio, this second day of April, A. D., 1923.

(Signed) J. B. Dugan, Acting Secretary of The Public Utilities Commission of Ohio.

[fol. 5] EXHIBIT TO CERTIFICATE OF J. B. DUGAN

The Public Utilities Commission of Ohio

Columbus, July 31, 1922.

Electric Service Schedules A. U. R. Case No. 21—The Ohio Utilities Company, P. U. C. O. No. 3, Filed to Become Effective August 26, 1920.

Mr. L. G. White, Chief Engineer the Public Utilities Commission of Ohio, Office.

DEAR SIR: Supplementing my report of April 14, 1921, on the above matter, Commission's engineers, L. F. Dabe and myself, have examined the records of the company in the Gas Co. building covering the period of 22 months, September 1, 1920, to June 30, 1922.

Operating expenses for this 22 months period I find the operating and maintenance expenses of the electric department to be:

Generating:

Power station labor	$8,412.17
Fuel	30,993.84
Miscellaneous	7,895.13
Total	$47,301.14

Distribution:

Overhead system	3,589.56
Meter repairs	728.63
Street lights	271.51
Miscellaneous	479.67
Total	$5,069.37

[fol. 6] General:

General officers	$2,147.60
Clerks	3,249.03
Office exp. and supplies	1,704.20
Rents	1,061.70
Telephones	256.64
Store room expense	167.04
Garage	829.88
Advertising	37.13
Insurance	1,320.00
Miscellaneous	307.07
Total	$11,080.29
Total operating and maintenance taxes	63,450.80

Taxes

For the 22 months' period the taxes, including general property tax, excise tax, public utilities tax and capital stock tax, are $6,252.70.

Total Cost of Service

For the 22 months' period the total cost of service of the electric department is:

Operating and maintenance	$63,450.00
Taxes	6,253.00
Depreciation allowance 5% per year on $154,656 for 22 months	14,177.00
8% return per year on $154,656 for 22 months	22,682.00
Total cost of service, 22 months	$106,562.00

[fol. 7] Revenues P. U. C. O. No. 3

During this 22 months' period the company has been collecting, under bond, the rates and charges of P. U. C. O. No. 3 protested schedule, the revenue being:

	K. W. H. sales	Revenue received
Residence and commercial light	450139	$65,738.62
Street lights	107926	7,925.21
Power	390723	29,780.33
Total revenue		$103,444.16
Add rents from Ice Company		2,200.00
Total revenues		$105,644.16

We have then:

Total cost of service, 22 months	$106,562.00
P. U. C. O. No. 3 revenues, 22 months	105,644.00
Deficit	$918.00

A financial and operating statement of an electric utility for analytic purposes should cover yearly periods because the lighting revenues have seasonal variations, but all cost of service except fuel are nearly constant.

It should be noted here that the remaining two months July and August, of a two-year period, are lean months for electric lighting revenues.

Also during the above 22 months the highest monthly charge for coal per ton is $8.01 delivered, November, 1920, the lowest

$4.38 delivered, March, 1922; the average monthly charge being $5.23 per ton delivered.

[fol. 8] At Hillsboro electric plant there is now only one week's coal supply. Run of mine coal today is quoted $8.00 to $9.50 per ton at the mines with freight rates of $2.39 per ton, making $8.39 to $11.89 f. o. b. Hillsboro.

Estimating the revenues and operating expenses for July and August, I predict that for the two year period, September 1, 1920, to August 31, 1922, the deficit will amount to about $2,500.00 under P. U. C. O. No. 3 schedule.

For the two year period the average per year net income available for depreciation allowance and rate of return items would be 12.2%.

Allowing 5% for annual depreciation the rate of return on the property would be 7.2%. There will be a deficit of 8% return until the monthly charges for coal fall below $5.23 per ton delivered at the Hillsboro plant for a period of several months.

Revenues applying P. U. C. O. No. 3 schedule modified by Commission Order, dated July 5, 1921, would be as follows, for the period of two years, September 1, 1920, to August 31, 1922:

	Revenues, 2 years
Residence and commercial light	$57,435.00
Street lights	8,799.00
Power	32,431.00
Total electric	$98,665.00
Add rent from Ice Company	2,400.00
Total revenues, 2 years	$101,065.00

[fol. 9] We have then:

Total cost of service, 2 years	$116,727.00
Estimated revenues applying commission order schedule	101,065.00
Deficit, 2 years	$15,662.00

For the two year period the average per year net income available for depreciation allowance and rate of return items would be 8%.

Allowing 5% for annual depreciation the rate of return on the property would be 3% on basis of Commission Order schedule.

In the record of the hearing of January 20, 1922, page 28, I notice that Mr. Higgins, representing the city, makes reference to the residence lighting low rates in Cincinnati.

It should be sufficient to mention that the Hillsboro plant must of necessity run non-condensing because of lack of water (the municipal water plant is frequently unable to give proper water service); the plant units total only 575 K. W. capacity (two 250 K. W. and one 75 K. W. units) the winter peak load being 300 K. W., sum-

mer peak 225 K. W.; there is no industrial load at night, consequently the load factor of the plant is low; the residence sections are made up of single houses, necessitating large distribution system cost per customer.

All of these conditions are less favorable to low cost of service as compared with conditions in Cincinnati.

Some pertinent comparisons are:

[fol. 10]	Hillsboro	Cincinnati
Capacity power house.....	575 K.W.	100,000 K.K.
Sales per year.....	512,360 K.W.H.	244,745,205
Number of customers.....	1,000	62,800
Average sales per customer.	512 K.W.H.	3,900 K.W.H.
Oper. and maint. expenses per K.W.H. sales.....	5.61 cts.	1.14 cts.
Revenue per K.W.H. sales..	11.0 cts.	2.51
Ratio last two items.....	2	2.2

For the above two year period the average residence and commercial electric light bill at Hillsboro is $3.16 per month under P. U. C. O. No. 3 schedule, and would have been $2.57 under Commission Order schedule, a difference of 59 cents per month or 2 cents per day.

The number of residence and commercial lighting customers has increased from 887 in September, 1920, to 916 in August of 1921, and to 1,000 in July, 1922.

Yours very truly, Thomas D. Pierce, Engineer.

[fol. 11] IN SUPREME COURT OF OHIO

[Title omitted]

APPLICATION FOR REHEARING—Filed June 19, 1923

Now comes The Ohio Utilities Company, a corporation organized and existing under the laws of Ohio, plaintiff in error herein, and hereby makes application for a rehearing of this cause for the following reasons:

1. That the judgment, decision and order of the Public Utilities Commission of Ohio entered on December 12, 1922, and made final by the Commission in overruling an application for rehearing on January 10, 1923, are contrary to the weight of, against and not supported by any testimony offered at the hearing of said cause before said the Public Utilities Commission.

2. That the said judgment, decision and order, if enforced, will confiscate the property of The Ohio Utilities Company, at Hillsboro, Ohio, and take from it its property, without due process of law,

and without allowing to said company a fair or adequate, or in fact any, substantial return on the value of said property in contravention of the Constitution of the State of Ohio, and especially Article 1, Section 19, thereof, and of the Constitution of the United States and especially the 14th amendment thereof.

3. This application further should be granted on account of the doctrine and principles established in the case of the State of Missouri, ex rel., Southernwestern Bell Telephone Company, plaintiff in error, v. Public Service Commission of Missouri, et al., in error to the Supreme Court of the State of Missouri, decided by the Supreme Court of the United States May 21, 1923. A copy of the opinion of Mr. Justice McReynolds accompanies this application.

4. This applicant, The Ohio Utilities Company, further makes this application for the purpose of affording this court the opportunity to review and further consider the federal question involved in the matter so that its opinion may be fairly stated in the event of a review by the Supreme Court of the United States.

[fol. 12] 5. As specific reasons for the application, as set forth in paragraphs 1, 2, 3 and 4 preceding, we submit the following:

a. The Commission caused its engineers to fix a value upon the property of The Ohio Utilities Company. Under Section 499-12, General Code of Ohio, it was the duty of the Commission to give notice to the company of the value fixed. It notice had been given and no protest had been filed within thirty days with the Commission, then the values fixed by the Commission would become final. In this case the Commission did not give any notice and the only values that were fixed, as upon testimony, were those made by the engineers. The engineer, Mr. Thomas D. Pierce, as shown by the report of Mr. White, (See R. p. 269), fixed the value at $154,655.93. The Commission in its finding put the total value of the property at $145,055.00. (See Record p. 253). The Commission eliminated an item of $5,000.00 reported favorably by the engineer, Mr. White. (See R. p. 269). If we add the item reported favorably by Mr. White, engineer of the Public Utilities Commission of Ohio, to the amount found by the Commission, we get a total value of the property of $150,055.00, so that there is no great dispute as to the total value of the property. Ordinarily, the finding of the Chief Engineer of the Commission, such as Mr. White, would be presumed to be conclusive as the fair value of the property. In the ordinary course of events the findings of the engineers would be subject to exception and then a hearing had upon the exceptions, but in this case the finding of the engineer, Mr. White, was accepted by the Ohio Utilities Company and we claim there is no right to modify this except upon testimony.

b. The working capital, as figured and reported by the Chief Engineer (See R. p. 136), was given at $4,198.42. This was cut by the Commission, without any testimony in support thereof, to the sum of $2,882.00.

c. The depreciation allowance made by the Commission of 5% on $145,055.00, and in the sum of $7,252.00, is in the face of the Commission's Chief Engineer's own report, (See R. p. 133) and confirmed in his testimony, (See R. p. 239), that the depreciation allowance should be $7,733.00.

d. We refer to Record page 247, wherein the Commission found that under an efficient administration and economical conduct of Respondent's electrical plant in the Village of Hillsboro, the schedule of rates and charges provided and prescribed by the order made and entered herein, as of July 5, 1921, will produce an annual gross revenue of $53,563.00, an amount which the Commission says will be sufficient to pay the reasonable costs of furnishing service and provide for depreciation reserve charge and the net return upon the respondent's property, whereas the record shows, "Exhibit C," p. 258, the following: That the gross earnings made by the accounting department of the Ohio Utilities Company for twenty seven months ending November 30, 1922, was $128,643.47, or an average per year of $57,174.84, and these gross earnings represent the full amount collected, according to the schedule filed by The Ohio Utilities Company, said company having given a bond as a basis for its right to collect the full amount according to its schedule. The total gross earnings per year, based on 27 months of careful [fol. 13] experienced, efficient and intelligent operation will not exceed $50,454.84. (See R. p. 259). The deficiency in the way of receipts, from actual experience, is clearly more than $3,000.00 less than the amount found by the Commission. In addition, it can be said that the estimated amount of $50,454.84, which we quote embraces $1,200.00 received from the ice company, for rental service, which is not an item in the way of receipts herein determining a fair rate.

e. Mr. Pierce, the appraisal engineer for The Ohio Utilities Commission, testified as follows: (R. p. 242).

Q. Do you consider the expenditures made by The Ohio Utilities Company, in the conduct of their plant at Hillsboro, as reasonable?

A. I do.

Q. Do you consider that the plant is efficiently and economically managed?

A. Yes, sir.

There is no testimony in the record to contradict the examination of the witness for the Commission, conducted by counsel for the compla-nants, and we submit there is no basis for a conclusion, from the evidence, that there was any improper expenditure or any lack of efficient management.

f. We submit the following reasons in conclusion:

1. The amount claimed for depreciation, to-wit, 5%, is the minimum. The Supreme Court of the United States in the Missouri case recognizes 6% as legitimate.

2. The total value of the property, as fixed by the evidence, is reasonably $154,655.93.

3. The gross earnings per year, based on past experience, will not amount to the sum fixed by the Commission.

4. The report of the engineers of the Commission substantiate the claim of The Ohio Utilities Company.

5. The amount allowed for operating expenses is less than that shown by experience and less than that reported by the engineers.

6. There is no evidence in the record to support the contention of the complainants.

We quote from Justice McReynolds in the opinion which accompanies this application:

[fol. 14] "The Commission is not the financial manager of the corporation and it is not empowered to substitute its judgment for that of the directors of the corporation; nor can it ignore items charged by the Utility as operating expenses unless there is an abuse of discretion in that regard by the corporate officers."

Respectfully submitted, The Ohio Utilities Company, by J. C. Martin, T. S. Hogan, Attorneys for The Ohio Utilities Company.

[fol. 15] EXHIBIT TO APPLICATION

Rate Research

Lux Utilitas publica. Lex

JUS

Volume 23. May 31, 1923. Number 9

UNITED STATES SUPREME COURT

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Rate Research

Vol. 23. May 31, 1923. No. 9

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[fol. 17] Rate Research

Vol. 23. New York, N. Y., May 31, 1923. No. 9

For statements of facts and opinions contained in papers abstracted herein, the Association does not hold itself responsible. The Editor, upon request, will endeavor to furnish complete copies of opinions or papers to which reference is made.

United States Supreme Court

Court Opinions

Missouri ex Rel. Southwestern Bell Telephone Co.

v.

Public Service Commission of Missouri

May 21, 1923.

The Supreme Court of the United States, by the following opinion, which is printed in full, reverses a judgment of the Supreme Court of Missouri affirming a judgment of the Cole County Circuit Court, which sustained an order of the Public Service Commission of Missouri, effective Dec. 1, 1919. The order prescribed reduced rates for exchange service and abolished the installation and moving charges theretofore demanded by the telephone company. The Commission, in its order, tentatively adopted the sum of $20,400,000 as the value of the property for the purposes of the case.

The Supreme Court found that the Commission had failed to accord any weight to the greatly enhanced costs of materials, labor, supplies, etc., over those prevailing in 1913, 1914 and 1916, and stated that an honest and intelligent forecast of probable future values made upon a view of all the relevant circumstances is essential. The Court stated the evidence clearly showed the valuation should be at least $25,000,000 for the purposes of the case. The Court found that the annual net profits estimated by the Commission available for depreciation and return ($2,828,617.60) would result, after deducting 6 per cent thereof for depreciation, in a possible return upon the minimum value of the property of 5 1/3 per cent which, the Court stated, "is wholly inadequate, considering the character of the investment and interest rates then prevailing."

The Court approved the payment of 4½ per cent of gross revenues by the company to the American Telephone & Telegraph Company as rents and for licenses and services, which had been disallowed by the Commission, stating that the State is not clothed with the general power of management incident to ownership.

The opinion was delivered by Mr. Justice McReynolds. Mr. Justice Brandeis concurred in the judgment of reversal, but on the ground that the order of the Commission prevents the utility from [fol. 18] earning a fair return on the amount prudently invested

by it. Mr. Justice Holmes concurred in the opinion written by Mr. Justice Brandeis, which follows majority opinion herein.

The majority opinion is as follows:

"The Supreme Court of Missouri (— Mo., —) affirmed a judgment of the Cole County Circuit Court which sustained an order of the Public Service Commission of Missouri, effective Dec. 1, 1919. That order undertook to reduce rates for exchange service and to abolish the installation and moving charges theretofore demanded by plaintiff in error. It is challenged as confiscatory and in conflict with the Fourteenth Amendment.

"During the period of Federal control—Aug. 1, 1918, to Aug. 1, *1910*—the Postmaster General advanced the rates for telephone service and prescribed a schedule of charges for installing and moving instruments. The Act of Congress approved July 11, 1919—41 Stat. 157—directed that the lines be returned to their owners at midnight July 31, 1919, and further,

" 'That the existing toll and exchange telephone rates as established or approved by the Postmaster General on or prior to June 6, 1919, shall continue in force for a period not to exceed four months after this Act takes effect, unless sooner modified or changed by the public authorities—State, municipal, or otherwise—having control or jurisdiction of tolls, charges, and rates or by contract or by voluntary reduction.'

"Aug. 4, 1919, the Commission directed plaintiff in error to show why exchange service rates and charges for installation and moving as fixed by the Postmaster General should be continued. After a hearing, it made an elaborate report and directed that the service rates should be reduced and the charges discontinued.

"The Company produced voluminous evidence, including its books, to establish the value of its property dedicated to public use. The books showed that the actual cost of 'total plant, supplies, equipment and working capital,' amounted to $22,888,943. Its engineers estimated the reproduction cost new as of June 30, 1919, thus: Physical telephone property, $28,454,488; working capital, $1,051,564; establishing business, $5,594,816; total, $35,100,868. They also estimated existing value (after allowing depreciation) upon the same date: Physical telephone property, $24,709,295; working capital, $1,051,564; establishing business, $5,594,816; total $31,355,675.

"The only evidence offered in opposition to values claimed by the Company were appraisals of its property at St. Louis, Caruthersville and Springfield respectively, as of December, 1913, February, 1914, and September, 1916, prepared by the Commission's engineers and accountants, together with statements showing actual cost of additions subsequent to those dates.

"Omitting a paragraph relative to an unimportant reduction—$17,513.52—from working capital account, that part of the Commission's report which deals with property values follows:

" 'The Company oered in evidence exhibits showing the value of its property in the entire State (outside the cities of Kansas City

[fol. 19] and Independence, whose rates are not involved in this case), and also at forty-six of its local exchanges in the State. It shows by such exhibits that the value of the property in the entire State (and when speaking of the property in the State in this report we mean exclusive of Kansas City and Independence) is as follows: Reproduction cost new, $35,100,471; reproduction cost new, less depreciation, $31,355,278; and cost as per books, $22,888,943. It also shows the Company's estimate of reproduction cost new less depreciation, and the pro-rated book cost, at each of the forty-six local exchanges mentioned.

" 'The engineers of this Commission have made a detailed inventory and appraisal and this Commission has formally valued the Company's property at only three of its exchanges, viz.: at the City of Caruthersville, reported in Re Southwestern Tel. & Tel. Company, 2 Mo. P. S. C. 492; at the City of St. Louis in cases No. 234 and No. 235 as yet unreported; and at the City of Springfield reported in Re Missouri and Kansas Telephone Company, 6 Mo. P. S. C. 279, and as a result we have only the estimates and appraisals of the Company before us in relation to the value of the property at the other exchanges. We think it is clear, however, from the data at hand that the values placed by the Company upon the property are excessive and not a just basis for rate making.

" 'The values fixed by this Commission at Caruthersville, St. Louis and Springfield in the cases above mentioned aggregate $11,003,898, while the Company estimates the aggregate cost of reproduction new of these plants in this case at $18,971,911. The ratio of the latter figure is 172.4 per cent. This percentage divided into $35,100,471, the Company's estimate of the aggregate cost of the reproduction new of its property in Missouri in this case, equals $20,350,000, which might be said to be one measure of the value of the property.

" 'Again, the Company's estimate of the aggregate cost of reproduction new, less depreciation, of its properties at Caruthersville, St. Louis and Springfield, in this case is $16,913,673. The ratio of this figure to the aggregate value fixed by the Commission at these exchanges, plus additions reported by the Company, is 153.7 per cent. This percentage divided into $31,355,278, the Company's estimate of the aggregate cost of reproduction new, less depreciation, of its property in Missouri in this case, equals $20,400,000, which may be said to be another measure of the value of the property.

" 'The Company also shows by exhibits 19 and 212 that its return under the Postmaster General's rates on $22,888,942, the book value of its property in the State, is at the rate of 11.65 per cent per annum for depreciation and return on the investment, which would yield the Company 6 per cent for depreciation and 5.65 per cent for return on the book cost of the property. As stated, however, we do not think that the book cost or the "prorated book cost" of the property as claimed by the Company would be a fair basis for rate making.

" 'As we understand it, the "prorated book cost" given in evidence by the Company for the various exchanges is simply the percentage relation of reproduction cost new, which the original cost of all prop-

erty bears to reproduction cost new of all property and in individual instances the actual cost might vary greatly, either up or down, from what an appraisal would show. If the Company, to eliminate competition, paid a price in excess of the value or because of discouraged local operation were enabled to purchase a plant far below its actual value, the 'prorated book cost' basis would not reflect anything like the original cost.

" 'We also think that the figure of $22,888,943, claimed by the Company to represent the book cost or original of the property cost in the State, is subject to certain adjustments with reference to the amount of non-useful property included, working capital, and the amounts to be deducted account extinguished value recouped from patrons by charges to depreciation.

" 'In the St. Louis case, supra, the original cost of the non-useful [fol. 20] property deducted and disallowed by the Commission amounted to $454,689.16. It appears from the Company's exhibit 256 that the "prorate book cost" of the St. Louis exchange is just about half of that given for the state. However, it is clear that the proportion of non-used and non-useful property in St. Louis bears a much larger percentage relation to useful property than would obtain throughout the State. It would appear that estimating the Company's property not used and useful for the entire State at $500,000 would be a fair approximation. This sum at least should be dededucted. * * *

" 'The depreciation reserve applicable to the Missouri property is not shown by the Company. However, on the Company's exhibit 15, the balance sheet as of June 30, 1919, of the Southwestern Bell Telephone Company (Missouri Corporation) operating in Missouri, Kansas and Arkansas, the reserve for accrued depreciation and reserve for amortization of intangibles is given as $7,963,082.37. The same exhibit shows the original cost of fixed capital for Missouri, Kansas and Arkansas property as $46,061,162.76. The total fixed capital of the Missouri property shown on the Company's exhibit 19 is $21,837,759, which is 47.4 per cent of $46,061,162.76 and 47.4 per cent of the reserve for depreciation. $7,963,082.37 equals $3,774,501 or the portion assignable to the Missouri property.

" 'Adjusting in accordance with the above, we have: Total plant & equipment, including Working Capital, as per Company's exhibit No. 19, $22,888,943. Deduct property not used or useful, $500,000.00; deduct excess working capital, $17,513.52; deduct Depreciation Reserve, $3,774,501.00; [total to be deducted] $4,292,-014.52. [Net total] $18,596,928.48; add for intangibles, 10%, $1,859,692.85; total adjusted original cost, $20,456,621.33.

" 'After carefully considering all the evidence as to values before us in this case, we are of the opinion that the value of the Company's property in the State, exclusive of Kansas City and independence, devoted to exchange service, will not exceed the sum of $20,400,000, and we will tentatively adopt this sum as the value of the property for the purposes of this case.

" 'As stated, supra, this Commission has formally valued only a part of this property, and we should not be understood as authoritatively fixing the value of the property at this time.'

"The three earlier valuations to which the Commission referred are: St. Louis, December, 1913, $8,500,000; Caruthersville, February, 1914, $25,000; Springfield, September, 1916, $815,000; total, $9,340,000. Between those dates and June 30, 1919, additions were made to these properties which cost respectively $1,623,765, $5,992 and $34,141. Adding these to the original valuations gives $11,003,898, the base sum used by the Commission for the estimates now under consideration.

(311.3--Present value:)

"Obviously, the Commission undertook to value the property without according any weight to the greatly enhanced costs of material, labor, supplies, etc., over those prevailing in 1913, 1914 and 1916. As a matter of common knowledge, these increases were large. Competent witnesses estimated them as 45 to 50 per centum.

"In Wilcox v. Consolidated Gas Co., 212 U. S. 19, 41, 52, this Court said:

" 'There must be a fair return upon the reasonable value of the property at the time it is being used for the public * * * And we concur with the court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property, which legally enters into the [fol. 21] consideration of the question of rates, has increased in value since it was acquired, the company is entitled to the benefit of such increase.'

"In the Minnesota Rate Cases, 230 U. S. 352, 454, this was said:

" 'The making of a just return for the use of the property involves the recognition of its fair value if it be more than its cost. The property is held in private ownership and it is that property, and not the original cost of it, of which the owner may not be deprived without due process of law.'

"See also Denver v. Denver Union Water Co., 246 U. S. 178, 191; Newton v. Consolidated Gas Co. of New York, 258 U. S. 165 (March 6, 1922), and Galveston Electric Co. v. City of Galveston, 258 U. S. 388 (April 10, 1922).

(630—Cost of supplies, labor, etc.:)

"It is impossible to ascertain what will amount to a fair return upon properties devoted to public service without giving consideration to the cost of labor, supplies, etc., at the time the investigation is made. An honest and intelligent forecast of probable future values made upon a view of all the relevant circumstances, is essential. If the highly important element of present costs is wholly disregarded such a forecast becomes impossible. Estimates for tomorrow cannot ignore prices of today.

(310.1—Rate base:)

"Witnesses for the Company asserted—and there was no substantial evidence to the contrary—that excluding cost of establishing

the business the property was worth at least 25 per cent more than the Commission's estimates, and we think the proof shows that for the purposes of the present case the valuation should be at least $25,000,000.

(340.1—Rate of return:)

"After disallowing an actual expenditure of $174,048.60 for rentals and services by the American Telephone & Telegraph Company and some other items not presently important, the Commission estimated the annual net profits on operations available for depreciation and return as $2,828,617.60—approximately 11 1/3 per cent of $25,000,000. That 6 per cent should be allowed for depreciation appears to be accepted by the Commission. Deducting this would leave a possible 5 1/3 per cent return upon the minimum value of the property, which is wholly inadequate, considering the character of the investment and interest rates then prevailing.

(149.2—Licensee revenue:)

"The important item of expense disallowed by the Commission—$174,048.60—is 55 per cent of the 4½ per cent of gross revenues paid by plaintiff in error to the American Telephone & Telegraph Company as rents for receivers, transmitters, induction coils, etc., and for licenses and services under the customary form of contract between the latter Company and its subsidiaries. Four and one-half per cent is the ordinary charge paid voluntarily by local companies of the general system. There is nothing to indicate bad faith. So far as appears, plaintiff in error's board of directors has exercised [fol. 22] a proper discretion about this matter requiring business judgment. It must never be forgotten that while the State may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies and is not clothed with the general power and management incident to ownership. The applicable general rule is well expressed in State Public Utilities Commission ex rel. Springfield v. Springfield Gas and Electric Company, 291 Ill. 209, 234.

" 'The Commission is not the financial manager of the corporation and it is not empowered to substitute its judgment for that of the directors of the corporation; nor can it ignore items charged by the utility as operating expenses unless there is an abuse of discretion in that regard by the corporate officers.'

"See Interstate Commerce Commission v. Chicago Great Western Railway Co., 209 U. S. 108; Chicago, Milwaukee & St. Paul Railroad Co. v. Wisconsin, 238 U. S. 491; People ex rel. v. Stevens, 197 N. Y. 1."

Mr. Justice BRANDEIS, with whom Mr. Justice Holmes concurs:

"I concur in the judgment of reversal. But I do so on the ground that the order of the State Commission prevents the utility from earning a fair return on the amount prudently[1] invested in it.

[1](Foot notes see page 145 et seq.).

Thus, I differ fundamentally from my brethren concerning the rule to be applied in determining whether a prescribed rate is confiscatory. The Court, adhering to the so-called rule of Smyth v. Ames, and further defining it, declares that what is termed value must be ascertained by giving weight, among other things, to estimates of what it would cost to reproduce the property at the time of the rate hearing.

"The so-called rule of Smyth v. Ames is, in my opinion, legally and economically unsound. The thing devoted by the investor to the public use is not specific property, tangible and intangible, but capital embarked in the enterprise. Upon the capital so invested the Federal Constitution guarantees to the utility the opportunity to earn a fair return.[2] Thus, it sets the limit to the power of the State to regulate rates. The Constitution does not guarantee to the utility the opportunity to earn a return on the value of all items of property used by the utility, or of any of them. The several items of property constituting the utility, taken singly, and freed from the public use, may conceivably have an aggregate value greater than if the items are used in combination. The owner is at liberty, in the absence of controlling statutory provision, to withdraw his property from the public service; and, if he does so, may obtain for it exchange value. Compare Brooks-Scanlon Co. v. Railroad Comm'ssion of Louisiana, 251 U. S. 396; Erie Railroad Co. v. Public Utility Commissioners, 254 U. S. 394, 411; Texas v. Eastern Texas R. R. Co., 258 U. S. 204. But so long as the specific items of property are employed by the utility, their exchange value is not of legal significance.

[fol. 23] "The investor agrees, by embarking capital in a utility, that its charges to the public shall be reasonable. His company is the substitute for the State in the performance of the public service; thus becoming a public servant. The compensation which the Constitution guarantees an opportunity to earn is the reasonable cost of conducting the business. Cost includes not only operating expenses, but also capital charges. Capital charges cover the allowance, by way of interest, for the use of the capital, whatever the nature of the security issued therefor; the allowance for risk incurred; and enough more to attract capital. The reasonable rate to be prescribed by a commission may allow an efficiently managed utility much more. But a rate is constitutionally compensatory, if it allows to the utility the opportunity to earn the cost of the service as thus defined.

(131—Determination of confiscation:)

"To decide whether a proposed rate is confiscatory, the tribunal must determine both what sum would be earned under it, and whether that sum would be a fair return. The decision involves ordinarily the making of four subsidiary ones:

1. What the gross earnings from operating the utility under the rate in controversy would be. (A prediction.)

2. What the operating expenses and charges, while so operating, would be. (A prediction.)

3. The rate base, that is, what the amount is on which a return should be earned. (Under Smyth v. Ames, an opinion, largely.)

4. What rate of return should be deemed fair. (An opinion, largely.)

"A decision that a rate is confiscatory (or compensatory) is thus the resultant of four subsidiary determinations. Each of the four involves forming a judgment, as distinguished from ascertaining facts. And as to each factor, there is usually room for difference in judgment. But the first two factors do not ordinarily present serious difficulties. The doubts and uncertainties incident to prophecy, which affect them, can, often, be resolved by a test period; and meanwhile protection may be afforded by giving a bond. Knoxville v. Knoxville Water Co., 212 U. S. 1, 18, 19; St. Louis, Iron Mountain & Southern Railway Co. v. McKnight, 244 U. S. 368. The doubts and uncertainties incident to the last two factors can be eliminated, or lessened, only by redefining the rate base, called value, and the measure of fairness in return, now applied under the rule of Smyth v. Ames. The experience of the twenty-five years since that case was decided has demonstrated that the rule there enunciated is delusive. In the attempt to apply it insuperable obstacles have been encountered. It has failed to afford adequate protection either to capital or to the public. It leaves open the door to grave injustice. To give to capital embarked in public utilities the protection guaranteed by the Constitution, and to secure for the public reasonable rates, it is essential that the rate base be definite, stable, and readily [fol. 24] ascertainable; and that the percentage to be earned on the rate base be measured by the cost, or charge, of the capital employed in the enterprise. It is consistent with the Federal Constitution for this Court now to lay down a rule which will establish such a rate base and such a measure of the rate of return deemed fair. In my opinion, it should do so.

(311.3—Present value:)

"The rule of Smyth v. Ames sets the laborious and baffling task of finding the present value of the utility. It is impossible to find an exchange value for a utility, since utilities, unlike merchandise or land, are not commonly bought and sold in the market. Nor can the present value of the utility be determined by capitalizing its net earnings, since the earnings are determined, in large measure, by the rate which the company will be permitted to charge; and, thus, the vicious circle would be encountered. So, under the rule of Smyth v. Ames, it is usually sought to prove the present value of a utility by ascertaining what it actually cost to construct and install it; or by estimating what it should have cost, or by estimating what it would cost to reproduce, or to replace it. To this end an enumeration is made of the component elements of the utility, tangible, and in-

tangible.[3] Then the actual, or the proper, cost of producing, or of reproducing, each part is sought. And finally, it is estimated how much less than the new each part, or the whole is worth. That is, the depreciation is estimated.[4] Obviously each step in the process of estimating the cost of reproduction, or replacement, involves forming an opinion, or exercising judgment, as distinguished from merely ascertaining facts. And this is true, also, of each step in the process of estimating how much less the existing plant is worth, than if it were new. There is another potent reason why, under the rule of Smyth v. Ames, the room for difference in opinion as to the present value of a utility is so wide. The rule does not measure the present value either by what the utility cost to produce; or by what it should have cost; or by what it would cost to reproduce, or to replace, it.[5] Under that rule the tribunal is directed, in forming its judgment, to take into consideration all those and also, other elements, called relevant facts.[6]

"Obviously 'value' cannot be a composite of all these elements. Nor can it be arrived at on all these bases. They are very different, and must, when applied in a particular case, lead to widely different results. The rule of Smyth v. Ames, as interpreted and applied, means merely that all must be considered. What, if any, weight shall be given to any one, must practically rest in the judicial discretion of the tribunal which makes the determination. Whether a desired result is reached may depend upon how any one of many elements is treated. It is true that the decision is usually rested largely upon records of financial transactions, on statistics and calculations. But as stated in Louisville v. Cumberland Telegraph & [fol. 25] Telephone Co., 225 U. S. 430, 436, 'every figure * * * that we have set down with delusive exactness' is 'speculative.'

"The efforts of courts to control commissions' findings of value have largely failed. The reason lies in the character of the rule declared in Smyth v. Ames. The rule there stated was to be applied solely as a means of determining whether rates already prescribed by the Legislature were confiscatory. It was to be applied judicially after the rate had been made; and by a court which had had no part in making the rate. When applied under such circumstances the rule, although cumbersome, may occasionally be effective in destroying an obstruction to justice, as the action of a court is, when it sets aside the verdict of a jury. But the commissions undertook to make the rule their standard for constructive action. They used it as a guide for making, or approving, rates. And the tendency developed to fix as reasonable, the rate which is not so low as to be confiscatory.[7] Thus the rule which assumes that rates of utilities will ordinarily be higher than the minimum required by the Constitution has, by the practice of the commissions, eliminated the margin between a reasonable rate and a merely compensatory rate; and, in the process of rate making, effective judicial review is very often rendered impossible.[8] The result, inherent in the rule itself, is arbitrary action, on the part of the rate regulating body. For the rule not only fails to furnish any applicable standard of judgment, but directs con-

sideration of so many elements; that almost any result may be justified.

"The adoption of present value of the utility's property, as the rate base, was urged in 1893, on behalf of the community; and it was adopted by the courts, largely, as a protection against inflated claims based on what were then deemed inflated prices of the past. See argument in Smyth v. Ames, 169 U. S. 466, 479, 480; San Diego Land & Town Co. v. National City, 174 U. S. 739, 757, 758; San Diego Land & Town Co. v. Jasper, 189 U. S. 439, 442, 443; Stanislaus County v. San Joaquin & Kings River Canal & Irrigation Co., 192 U. S. 201, 214. Reproduction cost, as the measure, or as evidence, of present value was, also, pressed then by representatives of the public who sought to justify legislative reductions of railroad rates.[9] The long depression which followed the panic of 1893 had brought prices to the lowest level reached in the Nineteenth Century. Insistence upon reproduction cost was the shippers' protest against burdens believed to have resulted from watered stocks, reckless financing, and unconscionable construction contracts. Those were the days before State legislation prohibited the issue of public utility securities without authorization from State officials; before accounting was prescribed and supervised; when outstanding bonds and stocks were hardly an indication of the amount of capital embarked in the enterprise; when depreciation accounts were unknown; and when book values, or property accounts, furnished no trustworthy evidence either of cost or of real value. Estimates of reproduction cost were [fol. 26] then offered, largely as a means, either of supplying lacks in the proof of actual cost and investment, or of testing the credibility of evidence adduced, or of showing that the cost of installation had been wasteful. For these purposes evidence of the cost of reproduction is obviously appropriate.

(311.2—Reproduction cost:)

"At first reproduction cost was welcomed by commissions as evidence of present value. Perhaps it was because the estimates then indicated values lower than the actual cost of installation. For, even after the price level had begun to rise, improved machinery and new devices tended for some years to reduce construction costs.[10] Evidence of reproduction costs was certainly welcomed, because it seemed to offer a reliable means for performing the difficult task of fixing, in obedience to Smyth v. Ames, the value of a new species of property to which the old tests—selling price or net earnings—were not applicable. The engineer spoke in figures—a language implying certitude. His estimates seemed to be free of the infirmities which had stamped as untrustworthy the opinion evidence of experts common in condemnation cases. Thus, for some time, replacement cost, on the basis of prices prevailing at the date of the valuation, was often adopted by State commissions as the standard for fixing the rate base. But gradually it came to be realized that the definiteness of the engineer's calculations was delusive; that they rested upon shifting theories; and that their estimates varied so widely as to intensify, rather than to allay doubts.[11] When

the price levels had risen largely, and estimates of replacement cost indicated values much greater than the actual cost of installation, many commissions refused to consider valuble what one declared to be assumptions based on things that never happened and estimates requiring the projection of the engineer's imagination into the future and methods of construction and installation that have never been and never will be adopted by sane men.[12] Finally, the great fluctuation in price levels incident to the World War led to the transfusion of the engineer's estimate of cost with the economist's prophecies concerning the future price plateaus. Then, the view that these estimates were not to be trusted as evidence of present value, was frequently expressed. And, State utility commissions, while admitting the evidence in obedience to Smyth v. Ames, failed, in ever-increasing numbers, to pay heed to it in fixing the rate base.[13] The conviction is widespread that a sound conclusion as to the actual value of a utility is not to be reached by a meticulous study of conflicting estimates of the cost of reproducing new the congerie of old machinery and equipment, called the plant, and the still more fanciful estimates concerning the value of the intangible elements of an established business.[14] Many commissions, like that of Massachusetts, have declared recently that 'capital honestly and prudently invested [fol. 27] must, under normal conditions, be taken as the controlling factor in fixing the basis for computing fair and reasonable rates.'[15]

"To require that reproduction cost at the date of the rate hearing be given weight in fixing the rate base, may subject investors to heavy losses when the high war and post-war price levels pass—and the price trend is again downward.[16] The aggregate of the investments which have already been made at high costs since 1914, and of those which will be made before prices and costs can fall heavily, may soon exceed by far the depreciated value of all the public utility investments made theretofore at relatively low cost. For it must be borne in mind that depreciation is an annual charge. That accrued on plants constructed in the long years prior to 1914 is much larger than that accruing on the properties installed in the shorter period since.[17]

"That part of the rule of Smyth v. Ames which fixes the rate of return deemed fair, at the percentage customarily paid on similar investments at the time of the rate hearing also exposes the investor and the public to danger of serious injustice. If the replacement-cost measure of value and the prevailing-rate measure of fairness of return should be applied, a company which raised, in 1920, for additions to plant, $1,000,000 on a 9 per cent basis, by a stock issue, or by long-term bond issue, may find a decade later, that the value of the plant (disregarding depreciation) is only $600,000, and that the fair return on money then invested in such enterprise is only 6 per cent. Under the test of a compensatory rate, urged in reliance upon Smyth v. Ames, a prescribed rate would not be confiscatory, if it appeared that the utility could earn under it $36,000 a year; whereas $90,000 would be required to earn the capital charges. On the other hand, if a plant had been built in times of

low costs, at $1,000,000 and the capital had been raised to the extent of $750,000 by an issue at par of 5 per cent 30-year bonds and to the extent of $250,000 by stock at par, and ten years later the price level was 75 per cent higher and the interest rates 8 per cent, it would be a fantastic result to hold that a rate was confiscatory, unless it yielded 8 per cent on the then reproduction cost of $1,750,000. For that would yield an income of $140,000, which would give the bondholders $37,500; and to the holders of the $250,000 stock $102,500, a return of 41 per cent per annum. Money required to establish in 1920 many necessary plants has cost the utility 10 per cent on thirty-year bonds. These long-time securities, issued to raise needed capital, will in 1930 and thereafter continue to bear the extra high rates of interest, which it was necessary to offer in 1920 in order to secure the required capital. The prevailing rate for such investments may in 1930 be only 7 per cent; or indeed 6 per cent; as it was found to be in 1904, in Stanislaus County v. San Joaquin Co., 192 U. S. 201; in 1909, in Knoxville v. Knoxville Water Co., 212 U. S. 1; and in 1912, in Cedar Rapids Gas Co. v. Cedar Rapids, [fol. 28] 223 U. S. 655, 670. A rule which limits the guaranteed rate of return on utility investments to that which may prevail at the time of the rate hearing, may fall far short of the capital charge then resting upon the company.

(340—Fair return:)

"In essence, there is no difference between the capital charge and operating expenses, depreciation, and taxes. Each is a part of the current cost of supplying the service; and each should be met from current income. When the capital charges are for interest on the floating debt paid at the current rate, this is readily seen. But it is no less true of a legal obligation to pay interest on long-term bonds, entered into years before the rate hearing and to continue for years thereafter; and it is true also of the economic obligation to pay dividends on stock, preferred or common. The necessary cost, and hence the capital charge, of the money embarked recently in utilities, and of that which may be invested in the near future, may be more, as it may be less, than the prevailing rate of return required to induce capital to enter upon like enterprises at the time of a rate hearing ten years hence. To fix the return by the rate which happens to prevail at such future day, opens the door to great hardships. Where the financing has been proper, the cost to the utility of the capital, required to construct, equip and operate its plant, should measure the rate of return which the Constitution guarantees op-ortunity to earn.[18]

(331—Amount of investment:)

"The adoption of the amount prudently invested as the rate base and the amount of the capital charge as the measure of the rate of return would give definiteness to these two factors involved in rate controversies which are now shifting and treacherous, and which render the proceedings peculiarly burdensome and largely futile.

Such measures offer a basis for decision which is certain and stable. The rate base would be ascertained as a fact, not determined as matter of opinion. It would not fluctuate with the market price of labor, or materials, or money. It would not change with hard times or shifting populations. It would not be distorted by the fickle and varying judgments of appraisers, commissions, or courts. It would, when once made in respect to any utility, be fixed, for all time, subject only to increases to represent additions to plant, after allowance for the depreciation included in the annual operating charges. The wild uncertainties of the present method of fixing the rate base under the so-called rule of Smyth v. Ames would be avoided; and likewise the fluctuations which introduce into the enterprise unnecessary elements of speculation, create useless expense, and impose upon the public a heavy, unnecessary burden.

"In speculative enterprises the capital cost of money is always high; partly because the risks involved must be covered; partly be-[fol. 29] cause speculative enterprises appeal only to the relatively small number of investors who are unwilling to accept a low return on their capital. It is to the interest both of the utility and of the community that the capital be obtained at as low a cost as possible. About 75 per cent of the capital invested in utilities is represented by bonds. He who buys bonds seeks primarily safety. If he can obtain it, he is content with a low rate of interest. Through a fluctuating rate base the bondholder can only lose. He can receive no benefit from a rule which increases the rate base as the price level rises; for his return, expressed in dollars, would be the same, whatever the income of the company.[19] That the stockholder does not in fact receive an increased return in time of rapidly rising prices under the rule of Smyth v. Ames, as applied, the financial record of the last six years demonstrates. But the burden upon the community is heavy because the risk makes the capital cost high.

"The expense and loss now incident to recurrent rate controversies is also very large. The most serious vice of the present rule for fixing the rate base is not the existing uncertainty; but that the method does not lead to certainty. Under it, the value for rate-making purposes must ever be an unstable factor. Instability is a standing menace of renewed controversy. The direct expense to the utility of maintaining an army of experts and of counsel is appalling. The indirect cost is far greater. The attention of officials high and low is, necessarily, diverted from the constructive tasks of efficient operation and of development. The public relations of the utility to the community are apt to become more and more strained. And a victory for the utility may, in the end, prove more disastrous than defeat would have been. The community defeated, but unconvinced, remembers; and may refuse aid when the company has occasion later to require its consent or cooperation in the conduct and development of its enterprise. Controversy with utilities is obviously injurious also to the public interest. The prime needs of the community are that facilities be ample and that rates be as low and as stable as possible. The community can get cheap service from private companies, only through cheap capital. It can get efficient

service, only if managers of the utility are free to devote themselves to problems of operation and of development. It can get ample service through private companies, only if investors may be assured of receiving continuously a fair return upon the investment.

"What is now termed the prudent investment is, in essence, the same thing as that which the Court has always sought to protect in using the term present value.[20] Twenty-five years ago, when Smyth v. Ames was decided, it was impossible to ascertain with accuracy, in respect to most of the utilities, in most of the States in which rate controversies arose, what it cost in money to establish the utility; or what the money cost with which the utility was estab- [fol. 30] lished; or what income had been earned by it; or how the income had been expended. It was, therefore, not feasible, then, to adopt, as the rate base, the amount properly invested or, as the rate of fair return, the amount of the capital charge. Now the situation is fundamentally different. These amounts are, now, readily ascertainable in respect to a large, and rapidly increasing, proportion of the utilities. The change in this respect is due to the enlargement, meanwhile, of the powers and functions of State utility commissions. The issue of securities is now, and for many years has been, under the control of commissions, in the leading States. Hence the amount of capital raised (since the conferring of these powers) and its cost are definitely known, through current supervision and prescribed accounts, supplemented by inspection of the commission's engineering force. Like knowledge concerning the investment of that part of the capital raised and expended before these broad functions were exercised by the utility commissions has been secured, in many cases, through investigations undertaken later, in connection with the issue of new securities or the regulation of rates. The amount and disposition of current earnings of all the companies are also known. It is, therefore, feasible now to adopt as the measure of a compensatory rate—the anual cost, or charge, of the capital prudently invested in the utility.[21] And, hence, it should be done.

(315.1—Going value; 315.4—Franchise value:)

"Value is a word of many meanings. That with which commissions and courts in these proceedings are concerned, in so-called confiscation cases, is a special value for rate making purposes, not exchange value. This is illustrated by our decisions which deal with the elements to be included in fixing the rate base. In Cedar Rapids Gas Co. v. Cedar Rapids, 223 U. S. 655, 669; and Des Moines Gas Co. v. Des Moines, 238 U. S. 153, 165, good will and franchise value were excluded from the rate base in determining whether the prescribed charges of the public utility were confiscatory. In Galveston Electric Co. v. Galveston, 258 U. S. 388, the cost of developing the business as a financially successful concern was excluded from the rate base. In Des Moines Gas Co. v. Des Moines, 238 U. S. 153, 171, the fact that the street had been paved (and hence the reproduction cost of laying gas mains greatly increased), was not allowed

as an element of value. But, obviously, good will and franchise value are important elements when exchange value is involved. And where the community acquires a public utility by purchase or condemnation, compensation must be made for its good will and earning power; at least under some circumstances. Omaha v. Omaha Water Co., 218 U. S. 180, 202, 203; National Waterworks Co. v. Kansas City, 62 Fed. 853, 865. Likewise, as between buyer and seller, the good will and earning power due to an effective organiza-[fol. 31] tion are often more important elements than tangible property. These cases would seem to require rejection of a rule which measured the rate base by cost of reproduction or by value in its ordinary sense.

"The rule by which the utilities are seeking to measure the return is, in essence, reproduction cost of the utility or prudent investment, whichever is the higher. This is indicated by the instructions contained in the Special Report on Valuation of Public Utilities, made to the American Society of Civil Engineers, October 28, 1916, Proceedings, Vol. 42:

"'So long as the company owner keeps a sum equivalent to the total investment at work for the public, either as property serving the public, or funds held in reserve for such property, no policy should be followed in estimating depreciation that will reduce the property to a value less than the investment * * * (p. 1726).

"'Estimates of the cost of reproduction should be based on the assumption that the identical property is to be reproduced, rather than a substitute property' (p. 1719).

—'although such a substitute property, much less costly than the existing plant, might furnish equal or better service, it is not reproduction of service, but of property, that is under consideration; and clearly the estimate should be of existing property created with public approval, rather than of a substituted property' (p. 1772).

"If the aim were to ascertain the value (in its ordinary sense) of the utility property, the inquiry would be, not what it would cost to reproduce the identical property, but what it would cost to establish a plant which could render the service, or in other words, at what cost could an equally efficient substitute be then produced. Surely the cost of an equally efficient substitute must be the maximum of the rate base, if prudent investment be rejected as the measure. The utilities seem to claim that the constitutional protection against confiscation guarantees them a return both upon unearned increment and upon the cost of property rendered valueless by obsolescence."

Notes

(1) The term prudent investment is not used in a critical sense. There should not be excluded from the finding of the base, investments which, under ordinary circumstances, would be deemed reasonable. The term is applied for the purpose of excluding what might be found to be dishonest or obviously wasteful or imprudent

expenditures. Every investment may be assumed to have been made in the exercise of reasonable judgment, unless the contrary is shown.

(2) Except that rates may, in no event, be prohibitive, exorbitant, or unduly burdensome to the public, Covington & Lexington Turnpike Co. v. Sanford, 164 U. S. 578, 596; Smyth v. Ames, 169 U. S. 466, 544; San Diego Land & Town Co. v. National City, 174 U. S. 739, 757; Minnesota Rate Cases, 230 U. S. 352, 454; Mr. Justice Miller in Chicago, Milwaukee & St. Paul Ry. Co. v. Minnesota, 134 U. S. 418, 459.

(3) In estimating replacement cost the first step is to determine what part of the property owned is used and useful in the public service. That involves, among other things, a consideration of retired or discarded property and the question whether the size and capacity of the plant are, in part excessive.
[fol. 32] The property included in the valuation is commonly treated under the following heads (See Report of Special Committee on Valuation, Amer. Society of Civil Engineers, October 28, 1916, 42 Proceedings, pp. 1708-1938):

A. Tangibles:
  (a) Land and buildings.
  (b) Plant.
B. Incidentals during construction:
  (a) Administration.
  (b) Engineering and superintendence.
  (c) Legal Expenses.
  (d) Brokerage.
  (e) Promotion fees.
  (f) Insurance.
  (g) Taxes.
  (h) Bond discount.
  (i) Contingencies.
C. Intangibles:
  (a) Good will.
  (b) Franchise value.
  (c) Going concern value.
  (d) Working capital.

"Going value" was declared by the Special Report (p. 1727) to embrace, among other things, "efficiency, favorable business arrangements and design"; intangibles to include also "leases, easements, water rights, traffic and operating agreements, strategic location and advantages and other privileges."

(4) Several different methods are used for measuring depreciation: (1) The replacement method; (2) the straight-line method; (3) the compound interest method; (4) the sinking fund method; (5) the unit cost method. It is largely a matter of judgment whether, and to what extent, any one of these several methods of depreciation should be applied. They may give widely different results. Special Report, October 28, 1916, Valuation of Public Utilities, Amer. Society of Civil Engineers, Vol. 42 Proceedings, pp. 1723-1727; 1846-1900.

(5) This Court declared in Smyth v. Ames, 169 U. S. 466, 547, that "present as compared with original cost of construction" is to be considered; and in Minnesota Rate Cases, 230 U. S. 352, 452, that "the cost-of-reproduction method is of service in ascertaining the present value of the plant, when it is reasonably applied

and when the cost of reproducing the property may be ascertained with a proper degree of certainty." Reproduction cost was thus held to be evidence of value. But it has never been held to be the measure of value.

(6) Some of these so-called relevant facts are, as the rule has been applied:

(a) Capitalization, i. e., bonds, stock and other securities outstanding.

(b) Book cost, i. e., the investment account as shown on the books.

(c) Actual cost, i. e., amounts actually paid in cash for installing the original plant and business, and the additions thereto.

(d) Historical cost, i. e., the proper cost of the existing plant and business, estimated on the basis of the price levels existing at the respective dates when the plant and the additions were constructed. This is often called prudent investment. Historical cost would, under normal conditions, be equal in amount to the original cost. The phrases are sometimes used to denote the same thing. But they are not the same; and they are often ascertained by different processes. Original cost is the amount actually paid to establish the utility. The amount is ascertained, where possible, by inspection of books and vouchers, and by other direct evidence. If this class of evidence is not complete, it may be necessary to supplement it by evidence as to what was probably paid for some items, by showing prices prevailing for work and materials at the time the same were supplied. But the evidence of these prices is merely circumstantial or corroborative, evidence of the amount actually paid. In determining actual cost, whatever the evidence, there is no attempt to determine whether the expenditure was wise or foolish, or whether it was useful or wasteful. Historical cost, on the other hand, is the amount which normally should have been paid for all the property which is usefully devoted to the public service. It is, in effect, what is termed the prudent investment. In enterprises efficiently launched and developed, historical cost and original cost would practically coincide both in items included and in amounts paid. That is, the subjects of expenditure would coincide; and the cost at prices prevailing at the time of installation would substantially coincide with the actual cost.

[fol. 33] (e) Reproduction cost of plant and business—estimated on price levels prevailing at the date of valuation.

(f) Reproduction cost of plant and business, estimated on average price levels prevailing during periods of, say, 5 to 10 years preceding the valuation.

(7) This, it appears, was the purpose of the board in Galveston Electric Co. v. City of Galveston, 258 U. S. 388.

(8) A rate order will not be set aside, unless the evidence compels conviction that a fair-minded board could not have reached the conclusion that the rate would prove adequate. San Diego Land & Town Co. v. National City, 174 U. S. 739, 754; San Diego Land &

Town Co. v. Jasper, 189 U. S. 439, 442; Knoxville v. Knoxville Water Co., 212 U. S. 1, 17; Van Dyke v. Geary, 244 U. S. 39, 49; Galveston Electric Co. v. Galveston, 258 U. S. 388, 401, 402. The range for difference of opinion on each of the many factors to be taken into consideration in fixing the rate base is so wide that such compelling evidence can rarely be adduced, where the report filed recites that, after full hearing, all the so-called relevant facts were given consideration by the commission in reaching the decision made. There may often be found in opinions of utility commissions, after a lengthy and detailed discussion of a vast quantity of expert opinion, a conclusion like the following from Re Illinois Northern Utilities Co., P. U. R. 1920 D, 979, 999:

"After considering all the evidence and arguments of counsel in this case, bearing upon the valuation of the properties herein involved, the investment therein, their original costs, cost to reproduce, and present values, including all overheads; preliminary costs; cost of engineering; supervision, interest, insurance, organization and legal expenses during construction; working capital; materials and supplies; and all other elements of value, tangible and intangible, and considering the plants are now going concerns in successful operation, the Commission finds * * * for the purposes of this proceeding, and for those purposes only, the fair rate-making values * * * as follows."

Hence, a commission's order must ordinarily be allowed to stand, unless it appears that there was some irregularity in the proceedings or that some erroneous rule of law was applied.

Since Smyth v. Ames this Court has dealt with the validity (under the Fourteenth Amendment) of rate regulation by the States in over 50 cases. In only 25 of these has the Court passed upon the question whether a rate fixed, or approved, by a state commission denied to the utility the opportunity of earning a fair return upon the fair value of the property. In none of these 25 cases has an order of a state commission, made after a full hearing, been declared void by this Court, on the ground that the finding of the rate base, or value, was too low. In none of them has the order been declared void on the ground that the commission fixed too low a percentage of return. Lower federal courts and state courts have occasionally intervened with effect. But the instances are relatively few as compared with the number of adverse decisions of the commissions. Even where orders fixing rates have been set side for irregularity or error, the result of the new hearing is not always advantageous to the company.

[9] See Steenerson v. Great Northern Ry. Co., 69 Minn., 353, 374; San Diego Water Co. v. San Diego, 118 Calif. 556, 568; Metropolitan Trust Co. v. Houston & Texas Central R. R. Co., 90 Fed. 683, 687, 688.

[10] Compare Mr. Justice Field in Railroad Commission Cases, 116 U. S. 307, 343, 344; Steenerson v. Great Northern Ry., 69 Minn. 353, 374.

[11] Thus in In re Marin Municipal Water District (Calif.) P. U. R. 1915 C 433, 452, the several valuations of five experts were:

$670,163; $723,001.85; $763,028; $919,204; $1,031,436. In Springfield v. Springfield Gas & Electric Co. (Ill.), P. U. R. 1916 C, 281, 307, the several valuations of five experts were $547,488; $588,262; $806,404; $898,785; $940,988. In Duluth Street Ry. Co. v. Railroad Commission (Wis.), P. U. R. 1915 D, 211, the valuations of two experts, both employed by the State were $600,000 and $1,100,000.

[fol. 34] [12] 15 Mich. Law Rev. 205, 216; Re Grafton County Electric Light & Power Co. (N. H.), P. U. R. 1916 E, 879, 885-888. Compare Appleton Water Works Co. v. Railroad Commission, 154 Wis. 121, 154, quoting: "Skilled witnesses came with such prejudice in their minds that hardly any weight should be given to their evidence."

In Danbury v. Danbury & Bethel Gas & Electric Light Co., P. U. R. 1921 D, 193 at 206 (Conn.), the Commission said:

"This method [reproduction at prices prevailing at time of valuation] of determining value usually includes percentages for engineering services never rendered, hypothetical efficiency of unknown labor, conjectural depreciation, opinion as to the condition of property, the supposed action of the elements; and, of course, its correctness depends upon whether superintendence was or would be wise or foolish; the investment improvident or frugal. It is based upon prophecy instead of reality, and depends so much upon half truths that it bears only a remote resemblance to fact, and rises, at best, only to the plane of a dignified guess."

In Public Service Commission v. Pacific Telephone & Telegraph Co., P. U. R. 1916 D, 947, 955, the Commission said: "The old methods have proven uncertain, indefinite and unsatisfactory to honest utilities and commissions alike."

See also In re Northampton Gas Petition (Mass.), P. U. R. 1915 A, 618, 626; Public Service Commission v. Pacific Telephone & Telegraph Co., P. U. R. 1916 D, 947, 955.

[13] Their action is in accord with views commonly held by legal writers. Compare Edwin C. Goddard, "Public Utility Valuation," 15 Mich. Law Rev. 205; Robert L. Hale, "The 'Physical Value' Fallacy in Rate Cases," 30 Yale Law Journal, 710; Donald R. Richberg, "A Permanent Basis for Rate Regulation," 31 Yale Law Journal, 263; Robert H. Whitten, "Fair Value for Rate Purposes," 27 Harv. Law Rev. 419; Henry W. Edgerton, "Value of the Service as a Factor in Rate Making," 32 Harv. Law Rev. 516; Gerard C. Henderson, "Railway Valuation and the Courts," 33 Harv. Law Rev. 902, 1031; Armistead M. Dobie, "Judicial Review of Administrative Action in Virginia," 8 Va. Law Rev. 477, 504. See also 32 Yale Law Journal, 390, 393; 19 Mich. Law Rev. 849.

[14] The Public Utility Reports for 1920, 1921, 1922 and 1923 (to March 1) contain 363 cases in which the rate base or value was passed upon. Reproduction cost at unit prices prevailing at the date of valuation appears to have been the predominant element in fixing

the rate base in only 5. In 63 the commission severely criticised, or expressly repudiated, this measure of value. In nearly all of the 363 cases, except 5, the commission either refused to pay heed to this factor as the measure of value, or indeed as evidence of any great weight.

The following summary shows the predominant element in fixing the rate base in the several cases:

In 5 cases: Reproduction cost at unit prices prevailing at the date of the valuation.

In 28 cases: Reproduction cost at unit prices prevailing at some date, or the averages of some period, prior to the date of the valuation.

In 12 cases: Reproduction cost at unit prices prevailing at some date not specifically stated.

In 22 cases: Reproduction cost of an inventory of a prior date at prices prevailing at that date or prior thereto, plus subsequent additions at actual cost (so-called split inventory method).

In 3 cases: Reproduction cost on basis of future predicted prices (so-called trend prices, or new plateau method).

In 102 cases: A prior valuation by the commission plus the actual cost of subsequent additions.

In 85 cases: The actual original cost (including both initial cost and additions).

In 6 cases: Original cost arbitrarily appreciated.

In 27 cases: The historical cost or prudent investment.

[fol. 35] In 28 cases: Book cost or investment.

In 12 cases: Bond and stock capitalization.

In 36 cases: Determination and classification of methods impossible.

(15) Bay State Rate Case, P. U. R. 1916 F, 221, 223. And see ibid. for a quotation from an address delivered at the "Conference on Valuation" in Philadelphia, November, 1915, in which the late John M. Eshleman, first president of the California Railroad Commission, said: "If we had this problem at the beginning and were not attacking it in the middle, we would have no difficulty in agreeing with the holder of capital upon this subject, for he would quite readily agree to take the cost of doing business plus an earning upon the money actually invested comparable to the earning offered in other available investments. Therefore, the cost of doing the business, plus a return upon the capital necessarily invested in the business, which return shall be as great as is offered in other businesses of similar hazard, is all that ought to be accorded for the future, and it is all that will be accorded if the public has any business sense. And if more is asked by the private owner, then he may expect no sympathy when he finds the public his competitor and his earning power impaired."

No case involving the fixing of rates by a commission has ever come to this Court from New England. The only case involving in any way the validity of rates is Interstate Consolidated Street Ry. Co. v. Massachusetts, 207 U. S. 79.

See also Re Cripple Creek Water Co. (Colo.), P. U. R. 1916 C,

788, 799, 800; Butler v. Lewiston, Augusta & Waterville St. Ry. (Maine), P. U. R. 1916 D, 25, 35.

(16) Engineers testifying in recent rate cases have assumed that there will be a new plateau of prices. In Galveston Electric Co. v. Galveston, 258 U. S., 388, the company contended that a plateau 70 per cent above the price level of 1914 should be accepted, and a plateau 33 1-3 per cent above was found probable by the master and assumed to be such by the lower court. In Bluefield Water Works & Improvement Co. v. Public Service Commission (No. 256, October Term, 1922), one 50 per cent above the 1914 level was contended for; in the case at bar a plateau 25 per cent above. But for the assumption that there will be a plateau there is no basis in American experience. The course of prices for the last 112 years indicates, on the contrary, that there may be a practically continuous decline for nearly a generation; that the present price level may fall to that of 1914 within a decade; and that, later, it may fall much lower. Prices rose steadily (with but slight and short recessions) for the 20 years before the United States entered the World War. From the low level of 1897 they rose 21 per cent to 1900, then rose further (with minor fluctuations, representing times of good business or bad) and reached in 1914 a point 50 per cent above the 1897 level. Then the great rise incident to the war set in. "Wholesale Prices, 1890 to 1921," U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 320, pp. 9-26. These are averages of the wholesale prices of all commodities. In the Bureau chart the 1913 prices are taken as the datum line (100). As compared with them the 1897 level was 67, the 1900 level 81. The chart on page 10 of the pamphlet entitled, "Price Changes and Business Prospects," published by the Cleveland Trust Company, gives price fluctuations for the 110 years prior to 1921. It shows three abrupt rises in the price level, by reason of war; and some less abrupt falls, by reason of financial panic. These may be called abnormal. But the normal has never been a plateau. The chart shows that the peak price levels were practically the same during the War of 1812, the Civil War and the World War; and it shows that practically continuous declines, for about 30 years, followed the first two wars. The experience after the third may be similar.

(17) The new enterprises undertaken at the present high level, or projected, are many; among them, development and long distance transmission of hydro-electric power, and of electric power generated at the coal mines. Moreover, nearly every utility now existing must make expenditures upon its plant to provide improvements, addi-[fol. 36] tions, or extensions. The growth of our communities, and increase in the demands of the individual, constantly compel enlargement of a utility's facilities. The present annual investment in public utility enterprises is much greater in amount than at any time in the past. Some of the construction done during the war was at prices for labor and materials 120 per cent above those prevailing in 1914. Recent construction was at prices 70 per cent higher. If replacement cost should become the measure of the rate base, the return on enterprises entered upon after 1914 would, obviously, be im-

perilled. And a serious decline of the price level would subject the return on many utilities established earlier to like dangers. A collapse of public utility values might result. And the impairment of public utility credit might be followed by the cessation of extensions and new undertakings.

(18) The community may, of course, demand, in respect to financing, as in respect to operation, that the right to earn a fair return be limited by the requirement that reasonable efficiency be exercised.

(19) Of course, anyone who chances to have money to invest, when money rates are high, gets the advantage incident to investing in a favorable market. If he invests in utility bonds, the higher agreed return upon his capital would be provided for by a rule which measures fair return by capital charges, as suggested above. If he elects to invest in the stock, he would, under the rule suggested, have the opportunity of earning a return commensurate with the value of the capital at the time it was embarked as stock in the enterprise.

(20) Compare Mr. Justice Field in Railroad Commission Cases, 116 U. S. 307, 343, 344; Mr. Justice Harlan, ibid., p. 341; Dow v. Beidelman, 125 U. S. 680, 690, 691; and Reagan v. Farmers Loan & Trust Co., 154 U. S. 362, 409, 412; where the necessity of limiting the broad power of regulation enunciated in Munn v. Illinois, 94 U. S. 113 was first given expression. See also "Public Utilities, Their Cost New and Depreciation," by H. V. Hayes, pp. 255, 256.

(21) In 1898, when Smyth v. Ames was decided, only one State—Massachusetts—had control by commission of the issue of securities by all public utility companies. (New Hampshire controlled security issues of railroads and street railways; Maine and New York controlled increase of capital stock by railroads and Connecticut, the issue of bonds by railroads.) In 1923 at least 24 States and the District of Columbia controlled through commissions the issue of securities of public utility companies. Legislation for 1923 and 1922 (in part) has not been available. Other States may have legislated on the subject in 1923 or 1922.

In 1898 no State had control by commission of the accounting of all public utilities. Massachusetts controlled the accounting of gas, electric light, street railway, and railroad companies; Iowa, of railways and carriers; New York Texas and Vermont, of railroads only. In 1923 at least 36 States and the District of Columbia controlled through commissions the accounting of public utility companies.

In 1898, only one State—Massachusetts—exercised through a commission control of all public utilities. In 1923 such control is exercised in at least 39 States and the District of Columbia. This does not include those States exercising commission control over railroads and related utilities, such as street railways, express companies, telephone and telegraph companies. These States number 47. The number of States having commission control of railroads in 1898 was 27. In 1922 every State except Delaware had commission control of railroads.

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WM. R. STANSBURY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1924.

No. 210.

THE OHIO UTILITIES COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF OHIO,

Plaintiff in Error,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO,

Defendant in Error.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

TIMOTHY S. HOGAN,
Counsel for The Ohio Utilities Company, Plaintiff in Error.

FOOTHAKER & BOOMSTEAD, Law Printers, Columbus, Ohio.

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BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

HISTORY OF THE CASE.

The Ohio Utilities Company is an Ohio corporation engaged among other things in furnishing electricity

to the people of Hillsboro, Ohio, and surrounding territory. Acting under the provisions of Section 614-20 of the General Code of Ohio, which provides as follows:

> "Sec. 614-20. **Thirty days' written notice required before change of rate, toll, etc., unless ordered by commission; new schedules filed on changes indicated; when publication in newspaper required; contents of publication.**—Unless otherwise ordered by the commission, no change shall be made in any rate, joint rate, toll, classification, charge or rental, in force at the time this act takes effect, or as shown upon the schedules which shall have been filed by a public utility in compliance with the requirements of this act, or by order of the commission, except after thirty days' notice, in writing, to the commission, which notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the change, rate, charge, toll, classification, or rental shall go into effect; and all proposed changes shall be plainly indicated upon existing schedules, or by filing new schedules thirty days prior to the time when they are to take effect, but the commission may prescribe a less time when they may take effect, provided, however, that if the proposed change shall effect an increase in the rate, joint rate, toll, classification, charge or rental, notice, in form approved by the commission, published once each week for three consecutive weeks before the effective date thereof, unless the commission shall authorize a less time, shall be given by publication in a newspaper published at the county seat of each county in which such change applies, and of general circulation therein, or in one newspaper published in, and of general circulation throughout the territory in which such utility operates. Such published notice shall set forth the fact that such application has been made, the effective date of the proposed new schedule, the name and location of the agent of

the utility in such county or territory where a copy of such proposed new schedule may be inspected by any interested party; and provided, further, however, that such utility shall at the time of the filing of the schedule with the commission, place on file with such agent of such utility a copy of the proposed new schedule and keep the same on file for the inspection of any interested party pending the hearing before such commission.

"**Powers of commission to enter upon hearing without pleadings filed; notice of suspension of schedule pending hearing; extension of time suspending schedule.**—Whenever there shall be filed with the commission any schedule effecting an increase in any rate, joint rate, toll, classification, charge or rental, or stating any new regulation or practice affecting any existing rate, joint rate, toll, classification, charge or rental in force at the time this act takes effect, the commission shall have, and it is hereby given authority, either upon complaint or upon its own initiative without complaint at once, and if so orders without answer or other form of pleading by the interested public utility, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, joint rate, toll, classification, charge, rental, regulation, or practice; and pending such hearing and the decision thereon, the commission upon filing with such schedule and delivering to the public utility affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and postpone the use and operation of such rate, joint rate, toll, classification, charge, rental, regulation or practice, but not for a longer period than thirty days beyond the time when such rate, joint rate, toll, classification, charge, rental, regulation or practice would otherwise go into effect; and after a full hearing, whether completed before or after the rate, joint rate, toll, classification, charge, rental, regulation or practice goes into effect, the commission may make such

order in reference to such rate, joint rate, toll, classification, charge, rental, regulation or practice as would be proper in a proceeding initiated after the rate, joint rate, toll, classification, charge, rental, regulation or practice had become effective; provided, that if any such hearing cannot be concluded within the period of suspension, as above stated, the commission may, in its discretion, extend the time of suspension for a period not exceeding thirty days; provided, however, that such suspension of payment of such increased rate, joint rate, toll, classification, charge or rental, shall not go into effect if the utility shall file with the commission a bond, undertaking or other security, to the satisfaction of the commission, securing and guaranteeing the repayment to all the consumers of such portion of such increased rate, joint rate, toll, classification, charge or rental, collected by such utility as the commission, upon final hearing, may determine to have been unreasonable or excessive, which repayments shall be made at such times and in such amounts as the commission shall order, such bond, undertaking or security to be in such amount as the commission may from time to time determine; provided, however, that the amount fixed at any time shall not in addition to the amount of such increase or other charge made by the utility already accrued exceed the estimated amount of such increase or other charge made by the utility extending over a period of one year, based upon the business of the utility for the previous year, or be less than one-half (1/2) of such estimated amount.

"**Burden of proof on public utility to show increased rate reasonable; preference over other questions.**—At any hearing involving a rate increased or sought to be increased after this section shall have become effective, the burden of proof to show that the increased rate or the proposed increased rate is just and reasonable shall be upon the public utility and the commission shall give to the hearing

and decision of such question, preference over other questions pending before it, and decide the same as speedily as possible."

The Ohio Utilities Company, on July 27, 1920, filed with The Public Utilities Commission of Ohio a certain proposed schedule of rates for electric service known as P. U. C. O. No. 3, to be effective, as provided by Section 614-20, on August 26, 1920. Said schedule is found on page 67 of the record.

A protest was filed against the proposed schedule of rates, and it was suspended by the commission for the purpose of having a hearing; whereupon, The Ohio Utilities Company filed a bond as provided by Section 614-20, supra, and the rates set forth in said schedule were put into effect and collected and are now being collected by The Ohio Utilities Company.

On October 5, 1920, a hearing was begun before the commission concerning the protest filed against the proposed schedule.

On July 5, 1921, the commission made an order modifying said schedule and fixing the rates to be charged by The Ohio Utilities Company for electric service. The Ohio Utilities Company filed an application for a rehearing as to those rates which were modified and reduced, which rehearing was held on October 17, 1922, and November 2, 1922. On December 12, 1922, the commission adhered to and made final its order of July 5, 1921. From its final order of December 12, 1922, error was prosecuted to the Supreme Court of Ohio. The Supreme Court affirmed the order of the commission;

application for rehearing was denied, and error is now prosecuted to this court.

The only rates in the order of the commission with which we are concerned are those for residence and commercial lighting and private garage.

The schedule originally filed by The Ohio Utilities Company fixed the rate for residence and commercial lighting as follows:

1. First 200 k. w. h. 15c;
2. All over 200 k. w. h. 12c;
3. Minimum monthly charge, $1.00.

Private Garage.

1. All k. w. h., 10c;
2. Minimum monthly charge, $2.00.

The commission's order reduced these rates as follows:

1. First 200 k. w. h., 12c;
2. All over 200 k. w. h., 10c;
3. Minimum monthly charge, $1.00.

Private Garage.

1. All k. w. h., 10c;
2. Minimum monthly charge, $1.00.

ORDER OF THE PUBLIC UTILITIES COMMISSION

The order of the Public Utilities Commission of Ohio, which was affirmed by the Supreme Court and which is complained of here, is as follows:

> "This day, after full hearing heretofore granted respondent, the Ohio Utilities Company, this matter again came on for consideration in pursuance of the investigation, by this commission, to determine the propriety of proposed increased rates and charges for electric service at Hillsboro, Ohio, contained in a schedule, designated P. U. C. O. No. 3, filed by said respondent to become effective August 26, 1920, and the order of this commission, made and entered herein upon the fifth day of July, 1921.
>
> "The commission, being fully advised in the premises, and having received and carefully considered the evidence and exhibits offered at the hearing and rehearing herein, and having made an independent examination of the books and property of the respondent company, finds:
>
> "That the fair present value of the physical property of the respondent, used and useful for the convenience of the public in the furnishing of electrical service to consumers thereof in the village of Hillsboro, Ohio, as of August 30, 1920, in the sum of $138,521.00.
>
> "And, there having been no proof of the actual expenditure of moneys for the ordinarily accepted intangibles and overheads, allowances should only be made for the following amounts, viz.:
>
> Taxes during construction $1,081.00
> Interest during construction 1,500.00
>
> That, to maintain an adequate stock of materials and supplies, there should be allowed the sum of $1,071.00.

"That, in the carrying on of its electrical service in said village, the respondent should have a working capital of $2,882.00.

"Determining the present value of said property, as a whole, as of said date, August 30, 1920, to be the sum of $145,055.00.

"That the reasonable operating expenses (including an allowance of $3,000.00 for taxes), for the furnishing of respondent's said electrical service in said village for a period of one year should, and, with a reasonably efficient administration of the affairs of said company, should be the sum of $37,608.00.

"That a reasonable annual allowance for depreciation upon said property will be five per centum of the said present value thereof, to wit, the sum of $7,252.00.

"That, therefore, the actual cost of furnishing electrical service for a period of one year in the village of Hillsboro, Ohio, should be the sum of $44,860.00.

"That a reasonable return upon the respondent's said property, so used in the furnishing of said service in said village, for the period of one year would be the sum of $8,703.00.

"That, from its said investigation aforesaid it is apparent that this plant has been uneconomically planned and constructed, in many regards inefficiently operated, and the service conducted without that regard for attracting new business and encouraging the greater use of the product which would reflect the saving per unit incident to increased volume of output, recognized as a basic principle in the conduct of commercial enterprises.

"That, at this time the respondent, in recognition of its responsibilities in this regard, is actually revamping its said plant for the purpose of securing an economical and efficient operation.

"That the public may not be penalized by extortionate rates for the omissions of the administration of a public utility's affairs.

"That, under an efficient administration and economical conduct of respondent's electrical plant in the said village of Hillsboro, Ohio, the schedule of rates and charges provided and prescribed by the order, made and entered herein as of date July fifth, 1921, will produce an annual gross revenue of $53,563.00, an amount sufficient to pay the above reasonable cost of furnishing said service, and provide the said depreciation reserve charge and the said net return upon respondent's said property.

"The commission, taking into consideration the value of respondent's said property, used and useful in the furnishing of said service, the cost of furnishing the same, and the necessity for making reservations for income for depreciation and contingencies, therefore further finds:

"That the said proposed rates and charges set forth in said schedule P. U. C. O. No. 3, for the following classes and kinds of service, to wit:

"Residence and commercial lighting: 15c per k. w. h. for the first 200 k. w. h. net; 12c per k. w. h. for all over 200 k. w. h. net.

Private garage automobile charging: Minimum bill, $2.00 per month; are excessive, unjust, unreasonable and unlawful.

"That just, reasonable and lawful rates and charges for the furnishing of the aforesaid classes of service in said village are:

"Residence and commercial lighting: 12c per k. w. h. for the first 200 k. w. h., net; 10c per k. w. h. for all over 200 k. w. h., net.

"Private garage automobile charging: Minimum bill, $1.00 per month, and

"That the rates and charges set forth in said

schedule, P. U. C. O. No. 3, for all other classes and kinds of srevice are not unjust, excessive or unreasonable, and that said schedule of rates and charges, amended by the substitution of said rates and charges for said residence and commercial lighting, and said private garage automobile charging services, will yield the respondent a fair, reasonable and just return upon its said property.

"It is therefore ordered that the following rates and charges, to wit:

"Residence and commercial lighting: 12c per k. w. h. for the first 200 k. w. h. per month, net; 10c per k. w. h. for all over 200 k. w. h. per month, net.

"Private garage automobile charging: Minimum bill, $1.00 per month, net; to be substituted for the rates and charges for such service set forth and provided in said proposed schedule, which, herein, have been found and determined to be excessive, unjust and unreasonable."

THE MATTERS COMPLAINED OF.

The plaintiff in error complains of the order of the commission because it is confiscatory, and points out herein the particulars in which said order is erroneous, as follows:

I. The finding by the commission of the value of the property used and useful at $145,055.00, instead of $154,655.93, as claimed by the utility and as established by the evidence.

II. The finding by the commission that a reasonable allowance for operating expenses, including an allowance of $3000.00 for taxes, would be $37,608.00, instead of $38,744.85, as found by the engineer of the commis-

sion (Rec., p. 155), or rather the allowance for this amount ought in fact to be $40,162.56, (Rec., p. 149-150), this amount being the average actual operating expenses, as shown by Exhibit "C", (Rec., p. 149), based on twenty-seven months' actual operation arrived at by dividing $90,366.10, the actual expenses, by twenty-seven to obtain monthly average and multiplying by twelve to get yearly average.

III. A reasonable return upon the utility's property used in the furnishing of service for the period of one year was found by the commission to be in the sum of $8,703.00, or 6 per cent on the value found by the commission in the sum of $145,055.00, instead of a reasonable return on $154,656.00, the fair value of the property, to wit, $12,372.00, or eight per cent., as shown by the testimony of the engineer of the commission, and approved by the chief engineer, (Rec., p. 155).

IV. The order of the commission is clearly confiscatory based on the value of the property found by the commission itself, to wit, $145,055.00, and the expenditures allowed by the commission and the actual receipts of the utility for twenty-seven months from the effective date of the schedule known as P. U. C. O. No. 3, effective August 26, 1920, for the reason that the maximum possible return during said period on said basis was 4.89 per centum per annum. The total of the expenditures allowed by the commission was $44,860.00, and the actual receipts of the utility were $50,454.84 per year.

V. The order of the commission is clearly confis-

catory, taking the valuation at $154,655.93, as the evidence shows it to be, and taking the operating expenses and gross income, as shown by actual experience under the evidence, in that the highest possible return under said order upon that basis is 2.88 per cent. The actual gross income per year for twenty-seven months from August 30th, 1920, was $50,454.84, (Rec., p. 150), the actual operating expenses, allowing for depreciation, the amount of which is not in dispute, was $45,996.85, leaving only a net profit for a return in the sum of $4457.99.

VI. The commission's estimate of gross revenue that will be produced with rates of 12c per k. w. h. for the first 200 k. w. h., and 10c per k. w. h. for all in excess of 200 k. w. h. sufficient to pay all costs of furnishing service provides depreciation charges of five per cent., and a net return of six per cent., accurately, six per cent. minus (the rate which the commission proposed to allow) upon respondent's property and upon which it based its order is $53,563.00. The fact is as shown by the Company's Exhibit "D," page 150 of the record, based upon twenty-seven month's actual operating experience, that by applying the commission's rate of 12c and 10c, including $1200.00, annual rental from the ice company, the gross revenue was only $50,454.84. This is the sum of $3,108.16 less by actual experience than the estimate of the commission, and this amount, together with the sum of $1136.85, the arbitrary cut on the reasonable operating expenses, aggregating $4,245.01, must be deducted from the amount allowed by

the commission as a fair return, to wit, the sum of $8,703.00, leaving only a maximum balance of $4457.99 for a fair return as shown by actual experience under the evidence.

VII. The engineer of the commission (see supplemental record, p. 5), reported to the commission that "the rate of return on the property would be three per cent. on basis of commission order schedule."

THE VALUE OF THE PROPERTY.

According to the decisions of this court and the lower courts, both federal and state, the fixing of rates to be charged by a public utility must be based upon certain competent elements, the controlling and primary one being a fair valuation of the property used and useful in the public service. The various states of this country have different methods of ascertaining valuation, and place the responsibility for ascertaining the valuation in different agencies, but all seek to arrive at the same destination. Unless a fair valuation is arrived at, in accordance with the method prescribed by the state in which the rate under discussion arises, a utility company has not been accorded the equal protection of the law guaranteed by the Fourteenth Amendment. We shall omit such portions of the statute of Ohio as are not applicable, and quote only those sections which apply to the instant case.

Section 499-12 of the General Code of Ohio provides as follows:

"The commission (meaning the Public Utilities

Commission of Ohio), whenever it shall have completed the valuation of the property of any public utility or railroad, and before such valuation shall have become final, shall give notice by registered letter to such public utility or railroad, or if the whole or the major portion of said utility or railroad is situated in any municipality, then to the mayor of such municipality * * *. If, within thirty days after such notification, no protest shall have been filed with the commission, then said valuation shall be and become final. If notice of protest shall have been filed, however, by any public utility or railroad, the commission shall fix a time for hearing the same and shall consider at such hearing any matter material thereto presented by such public utility or railroad or municipality, in support of its protest, or by any representative of the public utility against such protest. If after the hearing of any protest or any valuation so fixed, the commission shall be of the opinion that its inventory is incomplete or inaccurate **or that its valuation is incorrect**, it shall make such changes as may be necessary and shall issue an order making such corrected valuations final. A final valuation by the commission and all the classifications made for the ascertainment of such valuation shall be public and shall be prima facie evidence relative to the value of the property."

Section 499-16 of the General Code of Ohio provides as follows:

"**Filing Finding of Facts; Review.**—The commission shall make and file its findings of fact in writing upon all matters concerning which evidence shall have been introduced before it which in its judgment have bearing on the value of the property of the public utility or railroad affected. Such findings shall be subject to review by the Supreme Court of this state in the same manner and within the same time as other orders and decisions of the commission."

The defendant, the Public Utilities Commission of Ohio, made an order on July 5, 1921, which said order in full may be found on page 10 of the record, toward the bottom of the page.

The court will notice that in its order of July 5, 1921, the commission made no reference whatever to the question of valuation; that is to say, no certain amount was stated in said order or referred to in said order as being the value of the property. Practically all that the commission did was to reduce the schedule of the plaintiff and to state its reasons therefor.

On July 25, 1921, plaintiff asked for a rehearing before the Utilities Commission, stating its reasons therefor. Between the 5th of July and the 25th of July, information came to the plaintiff that the chief engineer of the Public Utilities Commission and his first assistant engineer had made a recommendation for a valuation to the Public Utilities Commission in the amount of $154,655.93. This information, however, did not come in response to any notice served by the Public Utilities Commission under the statute hereinbefore referred to. In other words, so far as the order of July 5, 1921, is concerned, the commission made no effort whatever to comply with the statutes of Ohio on tentative valuation, notice to the utility, final valuation and right to appeal.

The fact that the chief engineer of the commission and his first assistant had made a recommendation for valuation to the commission, having reached the plaintiff through its own efforts, when the application for

rehearing was filed upon the 25th of July, 1921, the plaintiff secured copies of the recommendation of the engineers and attached the same to the application for rehearing, and **only in this way** did any reference to any valuation appear. When the rehearing was held, the plaintiff indicated its willingness to accept and act upon the recommendation of the two engineers of the commission as to valuation. The Utilities Commission not only disregarded the evidence of the plaintiff as to valuation, but disregarded the report of its own engineers as to valuation, and in its final order of December 12, 1922, made a valuation based neither upon the evidence nor an attempt to comply with the statutes of Ohio, heretofore quoted, providing for, first, a tentative valuation; second, notice to the utility for the purpose of giving it an opportunity to protest, and third, a final valuation. In other words, the valuation of the commission was fabricated out of thin air, and, so far as the record discloses, did not even pretend to be based upon either the evidence in the record or anything of which the plaintiff had any knowledge. This fact is likewise important as reflecting upon the legal soundness of the statement of the commission in its final order to the following effect, Record, page 142:

> "The commission being fully advised in the premises, etc., * * * and having made an independent examination of the books and property of the respondent company * * *."

On March 13, 1923, the plaintiff made a motion in the Supreme Court of Ohio to require the Utilities Commission to transmit papers and complete transcript of evi-

dence in its possession to the Supreme Court of Ohio. This motion was allowed on the 27th of March, 1923, the court making the following order:

> "Allowed as to any records and exhibits which were considered by the commission."

Following the order of the Supreme Court, J. B. Dugan, acting secretary of the Public Utilities Commission, on April 2, 1923, transmitted to the Supreme Court of Ohio,

First. The report of Thomas D. Pierce, appraisal engineer, addressed to L. G. White, chief engineer, under date of November 18, 1920.

Second. Report of Pierce addressed to White under date of April 14, 1921.

Third. Report of White, chief engineer, addressed to the commission under date of May 6, 1921.

Fourth. Supplemental report of Pierce to White under date of July 31, 1922.

Until the certificate of Dugan was filed in the Supreme Court of Ohio, the plaintiff in error had no knowledge whatever that any such supplemental report as that designated under date of July 31, 1922, from Pierce to White, and found on page 3 of the supplemental record, had ever been made, notwithstanding the provision of the General Code of Ohio, Section 499-12, heretofore quoted, which required all such valuations and reports to be made public.

The Supreme Court ordered the commission to transmit to it all records and exhibits which were considered by the commission.

If the Utilities Commission made any independent examination of the books of the plaintiff company, it is either found in the reports of Pierce and White, heretofore referred to, which the commission, as shown in the previous discussion in this brief, disregarded, or the commission violated the order of the Supreme Court of Ohio and did not transmit to the Supreme Court of Ohio all of the records and exhibits which they considered. In other words, there is not a scintilla of evidence anywhere in the record to show that there was any other evidence considered or which could have been considered by the Public Utilities Commission of Ohio, except such as is disclosed by the record and the supplemental record.

The commission arrived at the present value of the property by taking the figures of the engineer of the commission, (Rec., p. 74), in the sum of $122,276.15, same being the value of the buildings and equipment, being the present value of the tangible property, disregarding the $276.15, and adding to the balance, to wit, $122,000.00, the sum of $16,521.00, the amount found by the engineer for additions and betterments, (Rec., p. 74), making the total $138,521.00, to which it added the following items:

Taxes during construction	$1081.00
Interest during construction	1500.00
To maintain an adequate stock of material and supplies	1071.00
Working capital for carrying on its electrical service	2882.00
Total additions	$6534.00

thus determining the present value of said property as a whole as of date August 30, 1920, (the approximate date at which the schedule was to go into effect) to be the sum of $145,055.00.

The commission denied certain of the items recommended by its own engineers, Pierce and White, found on page 74 of the Record, and modified others; thus cutting the present value from a fair amount of $154,-655.93 to $145,055.00, as herein explained.

First. The item of $5000.00 for preliminary organization expense was not allowed by the commission.

Second. The item of interest for one year's construction period was cut from $4507.98, as recommended by the commission's engineers, (Rec., p. 74), to $1500.00, (see utilities commission's order) making this reduction $3007.98.

Third. The item of working capital being one-twelfth of the annual operating expenses and one month's expense for coal was cut from $4198.42, as recommended by the engineers of the commission, (Rec., p. 74), to $2882.00 (see commmission's order), making a reduction of $1316.42.

The sum total of the rejections and the reductions being in the aggregate of $9600.55.

We shall discuss these items in order, briefly, and state our reasons why the commission was clearly in error in rejecting the first item and in cutting the second and third items.

THE DISALLOWANCE OF THE $5000.00 PRELIMINARY ORGANIZATION EXPENSE.

The commission stated as its reason for rejecting the item of $5000.00 for organization expense the following (Rec., 142):

> "And, there having been no proof of the actual expenditure of moneys for the ordinarily accepted intangibles and overheads, allowances should only be made for the following amounts, viz:
>
> Taxes during construction.....$1081.00
> Interest during construction..... 1500.00"

The commission in its very statement admits that intangibles and overheads, such as organization expenses, are ordinarily accepted. This court will recognize that it is not always easy to find proof of actual organization expenses, and it is true that items of this kind are ordinarily accepted, and it appears clear to us that the report of the commission's engineers upon this point affords all the proof that is necessary, especially when coupled with what the court will take notice of, that a preliminary organization expense for an electric plant worth $154,655.93 in the sum of $5000.00 is entirely reasonable. The utility in this case had no reason to doubt that this item of expense would be allowed, and its rejection by the commission seems to be purely arbitrary. On the face of it, it is but a reasonable allowance considering the value of the plant. The most ample justification for the allowance of this item appears

from the testimony of Mr. L. G. White, (Rec., p. 114), called as a witness by the objectors, Mr. White being the chief engineer for the Utilities Commission. Said testimony is as follows:

"Q. I thought you had done that personally. Well, Mr. White, will you please tell us, if you can, how the item of $5,000.00 for preliminary organization expense came to be inserted in the report signed by you, dated May 6th, 1921, as shown on page 9 of Exhibit A-1?

"A. The account system as prescribed by this commission in its Administrative Order, No. 22, provides, among other classifications of expense, on page 74 of that order, item No. 511, styled 'organization,' and that account takes care of or provides for fees paid to the government for the privilege of incorporation and all other fees and expenditures incident to the organizing of electric utilities, placing it in readiness to do business. This includes the cost of preparing and distributing prospectus, cost of soliciting subscribers for stock; cash fees paid to promoters and the actual cash value at the time of organization, and securities paid to promoters for their service in organizing the enterprise; attorney fees, cost of preparing and issuing certificates of stock, cost of procuring authority from the Public Utilities Commission, and other similar expenses; expenses incident to an increase in the capital stock and negotiations for the sale of stock and the expense of preparing and filing certificates for maintenance articles of incorporation.

That is all of the items under that heading.

"Mr. Huggins: Now, will you read my question to him, please, Mr. Okey?

(Question read.)

"A. That item is an estimate of the commission's engineer who made the investigation on the ground."

This testimony was uncontradicted, and it seems to us that when supported by reason and business experience, affords an entirely sufficient foundation for allowance.

In the case of the Van Wert Gas Light Company vs. The Public Utilities Commission of Ohio, 106 O. S., 170, wherein the order of the commission was approved by the Supreme Court of Ohio, and the total present value of the plant was fixed at $124,476.10, a preliminary organization and franchise expense of $5000.00 was allowed.

We may say at this point that the action of the commission is reflected right in the beginning in connection with this one item, and in view of the testimony of their own chief engineer, affirming the report of his assistant, Mr. T. D. Pierce, who was on the ground and examined the plant, there was no reason whatever for the rejection of this item of $5000.00.

This case is unique at least in this respect, that the only evidence offered at any of the hearings before the Public Utilities Commission of Ohio was that proffered by the utility itself. Furthermore, this item for preliminary organization expense was allowed by the engineer of the Utilities Commission in pursuance of and in reliance upon the order of the commission itself. We refer the court to page 21 of this brief, in which Mr. White, commission engineer, explains the reasons for the allowance of this item.

This estimate of $5000.00 was made by the appraisal engineer in his report to Mr. White. It was accepted

by the plaintiff in error at the time as being a reasonable figure and has been so accepted ever since, and there is no evidence whatever in the record contradicting such an allowance, nor is there any evidence showing the establishment or non-establishment of an independent allowance under this head either by the complainant before the Utilities Commission or by the Utilities Commission itself.

ALLOWANCE FOR ORGANIZATION.

> "An allowance of three per cent. for organization expenses of a large water company is not excessive."
>
> Bideford & Saco Water Co. v. Public Utilities Commission, Public Utilities Rep., 1920-B, 580, decided January 26, 1920.

This court in the case of Bluefield Water Works and Improvement Company v. West Virginia Public Service Commission, decided June 11, 1923, 262 U. S., 679, says:

> "The record clearly shows that the commission in arriving at its final figure did not accord proper if any weight to the greatly enhanced costs of construction in 1920 over those prevailing about 1915 and before the war, **as established by uncontradicted evidence**; and the company's detailed estimated cost of reproduction new, less depreciation, at 1920 prices, **appears to have been wholly disregarded.** This was erroneous." (Citing Missouri, ex rel, Southwestern Bell Telephone Co. v. Public Service Commission, decided May 21st, 1923, by this court.)

The black face type is ours. The instant case is on a parallel with the statement of Mr. Justice Butler in

the Bluefield case in this, that the commission in the instant case in arriving at its final valuation did not accord any weight whatever to the **uncontradicted testimony** as to the propriety of the allowance of $5000.00 for preliminary organization expense. The cases are likewise on all fours in that the commission **totally disregarded** the evidence in support of the allowance of this item, and we may say that in this case the evidence in support of this item was the only evidence whatever that touched upon the question at all, and more than all was reasonable and in line with the established custom of Ohio.

Let us in this connection call the court's attention to the order of the Public Utilities Commission which fixed the rates of which we complain. (See page 142 of the record.) The second paragraph is as follows:

> "The commission, being fully advised in the premises and having received and carefully considered the evidence and exhibits offered at the hearing and rehearing herein, and having made an independent examination of the books and property of the respondent company finds."

The only evidence in the record of any independent examination of the books and property of the plaintiff in error by the Public Utilities Commission is found in the reports of the commission's own engineers, Mr. White and Mr. Pierce, both of whom made an allowance of $5000.00 for preliminary organization expense. If the commission reached a conclusion on independent evidence, said evidence was considered in an ex parte way and no opportunity whatever afforded the plain-

tiff in error either to know what evidence the commission was considering or to offer any proof in support of any item that the commission might in the first instance be disposed to disallow. There was never any indication given to any of the parties to this proceeding that this allowance of $5000.00 was not proper. It was accepted and acted upon, and only when the commission makes the order fixing rates do we find this statement:

> "And there having been no proof of the actual expenditure of moneys for the ordinarily accepted intangibles and overheads, allowance should only be made for the following amounts, viz:
>
> "Taxes during construction.....$1081.00
> Interest during construction..... 1500.00"

The commission's own language indicates the fallacy of its own conclusion. They recognize that a reasonable amount for certain intangibles and overheads is ordinarily accepted, which must necessarily mean that they are accepted without specific proof of any given amount. In other words, that it of necessity believes that a company of this character must have expended money for preliminary organization expense, and would have to expend a reasonable sum for such purposes if the company were being organized at the time the rates were fixed, and it recognizes the fact in its own bulletin No. 511 referred to just immediately preceding this discussion in the testimony of Mr. White.

In this connection, as illustrative of the confiscatory character of the commission's action in this case, let us make a comparison with its action in the matter of the Cincinnati and Suburban Bell Telephone Company.

In this case the commission found the valuation to be $15,287,203.

An allowance for overheads of 12% or $1,834,464.00 was made, which included engineering, administrative and legal expenses, liability, insurance, taxes, and interest during construction, and working capital, including materials and supplies. The commission allowed us nothing for these items except

Taxes during construction	$1081.00
Interest during construction	1500.00
Working capital	2882.00
Materials and supplies	1071.00
Total	$6534.00

On the valuation as fixed by the commission this would be an allowance of slightly more than 4.6%. Had the commision allowed 12% the allowance under these items would have been $16,622.52, which added to $138,521.00 would make a valuation of $155,143.52, or approximately $500 more than we ask for.

The decision of the Public Utilities Commission of Ohio in the Cincinnati and Suburban Telephone Company case is found in Department Reports of the State of Ohio, Vol. XX, page 405. On page 410 the commission said:

> "Coming now to the placing of valuations for the so-called 'overheads' the commission feels that this is probably the most difficult problem in making a valuation. Individual engineers differ very widely as to the proper allowances to be made for the various items which go to make up overheads, and this commission finds that there is no doubt but that there is an actual expenditure for

these various items and that the same have a valuation worth but, in the absence of any direct or express testimony or evidence as to the amounts actually paid for these various items in producing the property, finds that a sum equal to 12% of the value of the physical property should be allowed for these overheads (which include engineering, administrative and legal expenses, liability insurance, taxes and interest during construction) and a working capital, (including a stock of materials and supplies), representing an amount approximately six weeks' operating income."

How different is this language from that in our case in which the commission says:

"And there having been no proof of the actual expenditures of moneys for the ordinarily accepted intangibles, allowance should **only** be made for the following amounts, viz:

Taxes during construction.....$1081.00
Interest during construction..... 1500.00"

Why **only** in this case, and not **only** in the Cincinnati case?

The plaintiff in error accepted the allowance of the engineer for preliminary organization expense as reasonable and no indication was made that this amount was not acceptable either to the protestant or to the Utilities Commission. We, therefore, find the Utilities Commission doing the very thing that Mr. Justice Butler reproves in the Bluefield case, when he says that the commission did not accord proper if any weight to uncontradicted evidence and wholly disregarded the same.

"A reasonable allowance should be made for organization expense in the valuation of utility

property although there is no direct evidence on this point; since it is known that some expenditures are necessary and actually required for organization purposes.'

Re: Pocatelo Gas & Power Co., v. Idaho Public Utilities Commission, Public Utilities Reports Annotated, 1923-C, p. 25.

The commission says on page 34:

"The books and records of The Pocatelo Gas and Power Company are not available prior to November, 1915, and in the books available after said date there are, under the term 'organization expense' several items totaling $1780.16, and an analysis of these items shows they were not made for such purpose which leaves the commission without any direct testimony on this point. The commission knows, however, that some expenditures were necessary and actually required for organization purposes. The organization of a public utility such as The Pocatelo Gas and Power Company necessitates more expenditure than that merely required in the process of forming a corporation. The field must be surveyed; individuals must be solicited who are willing to invest their money in property to be used in serving the public. In many cases plans must be formulated and the field surveyed to ascertain whether or not the venture will be successful or otherwise. Upon consideration of all those facts and the organization of The Pocatelo Gas and Power Company the commission finds, in the absence of direct testimony as to the actual amount expended, that the sum of $1500 is a reasonable amount for such purpose."

We may say in addition to what has been said that the commission in this last mentioned case allowed engineering and miscellaneous expense on additions.

"It is recognized by all familiar with the construction of properties of this character that an

organization would have been necessary to administer, direct and finance the work as it progressed, this would have required an expenditure of money for administration, legal and engineering expenses, interest during construction, and other items of like character.

"The company has arrived at the sum of these expenses by the addition of certain percentages to cost items, but has submitted no evidence of direct cost. The commission has made an investigation and an analysis of the several amounts and has made reductions in certain of them where they have appeared to be excessive."

Re: Utah Light and Traction Co. v. Utah Public Utilities Commission, Public Utilities Rep|, 1920-B, p. 262-273.

The following is proposition No. 7 of the syllabus in the case of City of Winona v. The Wisconsin and Minnesota Light and Power Company, 276 Fed., 996:

"In estimating the cost of reproduction of a gas plant, overhead items which were of such a nature that it was practically certain they were actually incurred in the original construction of the plant may be allowed, though there was no evidence they were incurred."

ITEM OF INTEREST

Here was another arbitrary cut of $3007.98. The assistant engineer, Mr. Pierce, (Rec. p. 74) recommended $4507.98. This being six percent. interest on the sum of $150,265.94 for one-half the period allowed for construction, that is, one-half year or six months. Certainly the engineer was reasonable in considering that ordinarily it would require a year for the construction of the elec-

tric property at Hillsboro. The commission arbitrarily cut this amount to $1500, which would mean that the plant should be constructed in four months. There was no testimony whatever to contradict the engineer with respect to a reasonable time for construction. The most conclusive proof that the engineer was in line with the action of the commission, aside from the weight that is to be given to the engineer's testimony, can be found in looking again at the case of Gas Light Company v. Public Utilities Commission, 106 O. S., p. 173, where the following item appears: "Interest on $192,842.27 x .03 per cent., $5,785.27," thus showing that a year was allowed for construction. Under the practice, the interest is allowed for one-half the time of the period of construction, or one-half the lawful interest for the full time, whichever way it may be put.

Herein appears Item II resolved against the plaintiff herein, and with no reason whatever.

ITEM OF WORKING CAPITAL.

The commission cut the amount allowed by Mr. Pierce, the assistant engineer, and approved by Mr. White, the chief engineer of the commission, the item of $4198.42, under the head of "working capital," to $2882. This item is calculated upon the theory that the utility should have as a working capital the amount of its operating expenses for at least one month plus one additional month's coal supply.

The engineer arrived at his figures in the following way:

Total operating and maintenance expense (Rec. p. 68), for the 12 months ending August 31, 1920	$29,621.34
Taxes	2,760.00
Total	$32,381.34
One-twelfth of this for one month would be	2,698.44
To which add for coal supply for one additional month	1,500.00
Making a total	$ 4,198.44

or two cents more than reported by the engineer.

The $1500 per month for coal is based on his report of the actual cost for fuel found on page 68 of the record for twelve months ending August 31, 1920, $17,608.75. The one-twelfth of this is approximately $1500. That the engineer, Mr. White, was correct in his calculations as to the cost of fuel for the year ending August 31, 1920, is sustained by the testimony of John A. Niles, auditor of the utility company, (see Exhibit "D", page 45 of the record,) wherein is to be found the cost of the fuel for each month of the year last aforesaid. There would seem to be no justification whatever for the arbitrary cut in this working capital allowance. The reason for an allowance for a month in advance for coal is due to the fact that a utility, in order to properly and safely conduct its business and to make sure that it can supply the public with service, must store its coal in advance. The other operating expenses take care of

themselves from month to month, and no advance payments are ordinarily necessary; but as to coal, this is not true. The uncertainties arising from railroad transportation and the operation of mines make it necessary for a utility prudently managed to look out somewhat for the future. In any event, the report of the commission's own engineer as to this is sufficient warrant for its allowance, and is certainly based upon custom.

We need only refer this court again to the case of Gas Light Company v. Public Utilities Commission of Ohio, 106 O. S., p. 170-173, to disclose what the commission in that case determined was a proper working capital for the Gas Light Company, the total value of whose property in use was $124,476.10 as shown by the commission. The commission determined upon an approved allowance of $6669.59 for a working capital. By what processes the finding of the commission in the Van Wert case and in the instant case can be reconciled surpasses our understanding. Moreover, there is no evidence in the record whatever to contradict the figures of Mr. White, the engineer for the commission, in the present case, and the action of the Utilities Commission in departing therefrom was purely arbitrary and one of the things resulting in the confiscatory order herein made.

> "A public utility is entitled to such a sum for working capital as is reasonably necessary to meet its current obligations as they arise in order that it may operate economically and efficiently."
>
> Re: Pocatelo Gas and Power Co. v. Idaho Public Utilities Commission, Public Utilities Reports, Annotated, 1923-C, p. 25.

The commission in the case of Pocatelo Gas and Power Company, Public Utilities Reports, 1923-C, page 38, where the total value of the property was fixed at $284,050, not quite twice as much as the property of the Hillsboro plant, allowed a working capital of $10,000, which is considerably more than twice what the Ohio Utilities Company asked for here.

The true conception of organization expenses as an item in rate making does not turn on what may have been spent for organization purposes when the plant was constructed, but what would have to be reasonably spent in reproducing the plant at the time the rates are fixed. No better statement of this proposition can be found than proposition four of the syllabus in the case of Bonbright et al. v. Geary et al., Corporation Commissioners of Arizona, 210 Fed., page 44:

> " 'Overhead charges' is a term which, as applied to a public service corporation, includes the expense that would necessarily be incurred in the reproduction of the property; the legal expenses of organization and expenses for fees, engineering inspection, supervision and management during construction; fire and casualty insurance, taxes and interest during the period; contractors' profits and other minor expenses of like character."

The Public Utilities Commission of Ohio had no more reason to allow taxes during construction, $1081, and interest during construction, $1500, than they would have to allow the other elements of preliminary organization expense. All three are proper elements of reproduction cost, and if in figuring the cost of reproduction an allowance should be made for taxes and an allowance

should be made for interest, by the same token an allowance should be made for all of the other preliminary organization expenses. In this case the commission arbitrarily allowed $1081 for taxes during construction; arbitrarily allowed $1500 for interest during construction, and arbitrarily disallowed anything for the other reorganization expenses. There was as much proof of one as there was of the other, and more reason for the allowance of all three in the amount set forth by the engineers than for the disallowance of the one by the commission and the allowance of the other two items without any evidence in support thereof.

We can search in vain among the reports for more confiscatory action than was taken by the commission in regard to the particular items in dispute here.

As to what should be allowed for working capital, the case of Bonbright et al. v. Geary et al., 210 Fed., 44, is instructive. In that case the total valuation placed by the complainant's engineer upon the property was $1,180,000, for a gas and electric company. The working capital asked for by the complainant was $50,000, which $50,000 formed a part of their total valuation of $1,180,000, roughly speaking, about one-twentieth of the total valuation of the property for working capital purposes, or five per cent. The commission's engineers placed the amount of the working capital at $23,500, or approximately two and one-half percent. The court allowed $50,000, and in making said allowance said:

> "We come next to the valuation of what is termed the working capital. The experts for the complainant valued this item at $50,000. The cor-

poration commission valued it at $23,500. We think the latter sum is too small for the current business of the corporation. The corporation must carry a certain amount of supplies, and should pay its bills for repairs and supplies at the end of the week or month as they come due, and should not be obliged to await the collection of its revenues from the rates collected by the company from its customers. There is always more or less delay in collecting rates. The company should, therefore, have constantly on hand what might be termed a revolving fund to pay its own current obligations and keep its credit good and enable it to transact its business promptly and satisfactorily to everybody concerned. We think that a working capital of $50,000 is a reasonable capital for the corporation in this case and should be allowed as a valuation in its plant."

We call the court's attention to the fact that here was an allowance of five per cent. of the total valuation of the property in 1913. This was before the tremendously rising costs incident to and following the war set in, whereas, in the case at bar, the defendant in error made an allowance for working capital of only $2882, or less than two per cent. on the value of the property as fixed by the commission. The allowance of the engineers in the present case for working capital was $4198, or about 2.8 per cent. on the commission's value, and this amount the plaintiff in error was willing and is willing to accept in spite of the fact that it is over two per cent. less than was customarily allowed in pre-war times for like public utilities on a valuation several thousand dollars under what the plaintiff in error insists the proper valuation is here.

"The percentage allowed for working cash capital on the annual operating expenses is less in the case of a large utility than a small one, since the amount of cash which must be carried on hand to meet the incoming invoices does not increase in the case of a large utility in proportion to the size of the concern."

Re: Pacific Gas and Power Company, Public Utilities Reports, 1921-C, p. 385.

We think the foregoing clearly establishes the fact that the sum of $9600.55, the aggregate of the rejections and the reductions made by the Commission, should be clearly added to the $145,055.00, the present value of the property as found by the Commission, making a total fair amount of $154,655.93, as the present value of the property used and useful by the utility and upon which it is entitled to a fair return.

COMPLAINT AGAINST THE ALLOWANCE OF THE COMMISSION FOR OPERATING EXPENSES.

The Commission allowed for operating expenses (including an allowance of $3000.00 for taxes) the sum of $37,608.00. Mr. Pierce, the engineer, in his report approved by Mr. White, chief engineer, (Rec., p. 155) found the operating expenses from March 1, 1920, to February 28, 1921, to be $38,744.85. These are the expenses actually incurred for the period of six months prior to the effective date of the schedule and the six months following the effective date of the schedule.

This court held in the case of the State of Missouri,

ex rel. Southwestern Bell Telephone Company v. Public Service Commission of Missouri, 262 U. S., 276, that a public service commission had no right to disallow items of expense paid by a corporation where there is nothing to indicate bad faith on the part of the management.

Proposition three of the syllabus is as follows:

> "A public service commission can not in fixing a rate for public telephone service, disallow an item of expense paid by the management of the corporation for rented equipment where there is nothing to indicate bad faith on the part of the management."

Mr. Justice McReynolds says on page 289:

> "There is nothing to indicate bad faith. So far as appears, plaintiff in error's board of directors has exercised a proper discretion about this matter requiring business judgment. It must never be forgotten that while the state may regulate, with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership. The applicable rule is well expressed in State Public Utilities Commission ex rel. Springfield v. Springfield Gas and Electric Company, 291 Ill., 209, 234, P. U. R. 1920C, 640, 125 N. E., 891:
>
> " 'The Commission is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of the directors of the corporation; nor can it ignore items charged by the utility as operating expenses unless there is an abuse of discretion in that regard by the corporate officers.' "

There is no more evidence to indicate bad faith or abuse of discretion in the present case than there is in

the case just referred to. In fact, there is no evidence at all of bad faith, abuse of discretion or uneconomical management of the property, and the Commission was without power to disregard the report of its own engineer and to disregard the figures of the company's books showing the actual expenditures for the six months preceding and the six months succeeding the effective date of the schedule to be $38,744.85, there being no evidence whatever to show that said figures were incorrect.

Thus it appears plain that the Commission made an arbitrary cut on the reasonable operating expenses of $1136.85.

The finding for the actual cost of furnishing electrical service for the period of one year instead of being the aggregate of $37,608.00 and $7252.00, or $44,860.00, as found by the Commission, should be $38,744.85, the reasonable cost of administration, plus $7252.00, for depreciation, or a total of $45,996.85.

If we assume for the purpose of argument that the Commission was right in estimating (Rec., p. 143) that the utility under the schedule of rates prescribed by its order made and entered as of date December 12, 1922, would produce an annual gross revenue of $53,563.00, there would be left for a return the sum of $7567.85, or a rate of 4.89 on a valuation of $154,655.93, or a rate of 5.2 per cent. on a valuation of $145,055.00, the present value as fixed by the Commission itself. This rate for a utility in the electric light business is clearly confiscatory.

The second proposition of the syllabus in the case of the State of Missouri ex rel. Southwestern Bell Telephone Company v. Public Service Commission of Missouri, supra, is as follows:

> "A return of 5 1/3% upon the minimum value of property of a public telephone corporation is wholly inadequate at a time when prevailing investment and interest rates are much higher than that."

The order of the Commission is still more clearly confiscatory taking the valuation at $154,655.93 and the operating expenses and gross income, as shown by actual experience, in that the highest possible return from said order based on experience is 2.88 per cent., as shown by the following:

The Commission set aside for reserve the sum of $8703.00, from this amount we must deduct $1136.85, the arbitrary cut made by the Commission under the head of operating expenses, said cut being just that amount less than expenses, as shown to be true, leaving a balance of $7566.15, and from this amount we must deduct $3108.16, being the difference between the Commission's estimate of gross revenue per year under its order and the actual amount received under its order per year based upon twenty-seven months' actual operating experience under its order, leaving a balance as the only return to the utility per year for its service in the sum of $4457.99, or in percentage only 2.88. If we take the value of the property as found by the Commission to be $145,055.00, the return in percentage upon this basis would be only 3.07.

SUPPLEMENTAL REPORT OF THOMAS D. PIERCE, ENGINEER TO THE PUBLIC UTILITIES COMMISSION.

We give herein a copy of the report of Mr. Thomas D. Pierce, engineer of the Public Utilities Commission of Ohio, to L. G. White, chief engineer of the Public Utilities Commission of Ohio, dated July 31, 1922, (see supplemental record, p. 3), covering the period of twenty-two months from September 1, 1920, to June 30, 1922, showing the operating expenses and the maintenance expenses for said twenty-two months as they actually were found to be during that period, and likewise, the actual revenues received during that period by the company under P. U. C. O. No. 3, the company collecting the full amount of its schedules under bond, the rates and charges of P. U. C. O. No. 3, protested schedule. Said report is as follows:

Exhibit to Certificate of J. B. Dugan.

The Public Utilities Commission of Ohio

Columbus, July 31, 1922.

Electric Service Schedules A. U. R. Case No. 21—The Ohio Utilities Company, P. U. C. O. No. 3, Filed to Become Effective August 26, 1920.

Mr. L. G. White, Chief Engineer the Public Utilities Commission of Ohio, Office.

Dear Sir: Supplementing my report of April 14, 1921, on the above matter, Commission's engineers, L. F. Dabe and myself, have examined the records of

the company in the Gas Co. building covering the period of 22 months, September 1, 1920, to June 30, 1922.

Operating expenses for this 22 months period I find the operating and maintenance expenses of the electric department to be:

Generating:	
Power station labor	$8,412.17
Fuel	30,993.84
Miscellaneous	7,895.13
Total	$47,301.14
Distribution:	
Overhead system	3,589.56
Meter repairs	728.63
Street lights	271.51
Miscellaneous	479.67
Total	$5,069.37
General:	
General officers	$2,147.60
Clerks	3,249.03
Office exp. and supplies	1,704.20
Rents	1,061.70
Telephones	256.64
Store room expense	167.04
Garage	829.88
Advertising	37.13
Insurance	1,320.00
Miscellaneous	307.07
Total	$11,080.29
Total operating and maintenance	63,450.80

Taxes

For the 22 months' period the taxes, including general property tax, excise tax, public utilities tax and capital stock tax, are $6252.70.

Total Cost of Service

For the 22 months' period the total cost of service of the electric department is:

Operating and maintenance	$63,450.00
Taxes	6,253.00
Depreciation allowance 5% per year on $154,656 for 22 months	14,177.00
8% return per year on $154,656 for 22 months	22,682.00
Total cost of service, 22 months	$106,562.00

Revenues P. U. C. O. No. 3

During this 22 months' period the company has been collecting, under bond, the rates and charges of P. U. C. O. No. 3 protested schedule, the revenue being:

	K. W. H. sales	Revenue received
Residence and commercial light	450139	$65,738.62
Street lights	107926	7,925.21
Power	390723	29,780.33
Total revenue		$103,444.16
Add rents from Ice Company		2,200.00
Total revenues		$105,644.16

We have then:

Total cost of service, 22 months	$106,562.00
P. U. C. O. No. 3 revenues, 22 months	105,644.00
Deficit	$918.00

A financial and operating statement of an electric utility for analytic purposes should cover yearly periods because the lighting revenues have seasonal variations, but all cost of service except fuel are nearly constant.

It should be noted here that the remaining two months July and August, of a two-year period, are lean months for electric lighting revenues.

Also during the above 22 months the highest monthly charge for coal per ton is $8.01 delivered, November, 1920, the lowest $4.38 delivered, March, 1922; the average monthly charge being $5.23 per ton delivered.

At Hillsboro electric plant there is now only one week's coal supply. Run of mine coal today is quoted at $8.00 to $9.50 per ton at the mines with freight rates of $2.39 per ton, making $8.39 to $11.89 f. o. b. Hillsboro.

Estimating the revenues and operating expenses for July and August, I predict that for the two year period, September 1, 1920, to August 31, 1922, the deficit will amount to about $2500.00 under P. U. C. O. No. 3 schedule.

For the two year period the average per year net income available for depreciation allowance and rate of return items would be 12.2%.

Allowing 5% for annual depreciation the rate of return on the property would be 7.2%. There will be a

deficit of 8% return until the monthly charges for coal fall below $5.23 per ton delivered at the Hillsboro plant for a period of several months.

Revenues applying P. U. C. O. No. 3 schedule modified by Commission Order, dated July 5, 1921, would be as follows, for the period of two years, September 1, 1920, to August 31, 1922:

	Revenues, 2 years
Residence and commercial light	$57,435.00
Street lights	8,799.00
Power	32,431.00
Total electric	$98,665.00
Add rent from Ice Company	2,400.00
Total revenues, 2 years	$101,065.00

We have then:

Total cost of service, 2 years	$116,727.00
Estimated revenues applying commission order schedule	101,065.00
Deficit, 2 years	$15,662.00

For the two year period the average per year net income available for depreciation allowance and rate of return items would be 8%.

Allowing 5% for annual depreciation the rate of return on the property would be 3% on basis of Commission Order schedule.

In the record of the hearing of January 20, 1922, page 28, I notice that Mr. Higgins, representing the city, makes reference to the residence lighting low rates in Cincinnati.

It should be sufficient to mention that the Hillsboro plant must of necessity run non-condensing because of lack of water (the municipal water plant is frequently unable to give proper water service); the plant units total only 575 K. W. capacity (two 250 K. W. and one 75 K. W. units) the winter peak load being 300 K. W., summer peak 225 K. W.; there is no industrial load at night, consequently the load factor of the plant is low; the residence sections are made up of single houses, necessitating large distribution system cost per customer.

All of these conditions are less favorable to low cost of service as compared with conditions in Cincinnati.

Some pertinent comparisons are:

	Hillsboro	Cincinnati
Capacity power house	575 K.W.	100,000 K.K.
Sales per year	512,360 K.W.H.	244,745,205
No. of customers	1,000	62,800
Average sales per customer	512 K.W.H.	3,900 K.W.H.
Oper. and maint. expenses per K.W.H. sales	5.61 cts.	1.14 cts.
Rev. per K.W.H. sales	11.0 cts.	2.51
Ratio last two items	2	2.2

For the above two year period the average residence and commercial electric light bill at Hillsboro is $3.16 per month under P. U. C. O. No. 3 schedule, and would

have been $2.57 under Commission Order schedule, a difference of 59 cents per month or 2 cents per day.

The number of residence and commercial lighting customers has increased from 887 in September, 1920, to 916 in August of 1921, and to 1000 in July, 1922.

Yours very truly,

Thomas D. Pierce, Engineer.

OBSERVATIONS ON MR. PIERCE'S REPORT

It will be observed that under Mr. Pierce's report the total cost of service for twenty-two months allowing for a return of eight per cent. per year on $154,656.00 was $106,562.00; that the total revenues collected, collections being made under bond and subject to rebate in case the order of the Commission be not reversed, was $105,644.16, leaving as reported by Mr. Pierce a deficit of $918.00.

The revenues under Mr. Pierce's report applying P. U. C. O. No. 3 schedule, modified by the Commission's order dated July 5, 1921, for the period of two years, beginning September 1, 1920, and ending August 31, 1922, was $101,065.00. The total cost of service for the same two years was $116,727.00, leaving a deficit of $15,662.00. Mr. Pierce expressly says as follows:

> "Allowing five per cent. for annual depreciation, the rate of return on the property would be three per cent. on the basis of the Commission's order schedule."

In our own previous calculation in this brief based on considerations well founded and demonstrated, the re-

turn as before stated would be 2.88 per cent., exceedingly close to the independent calculation of Mr. Pierce who reported three per cent.

In arriving at this conclusion we are not depending upon conjecture or guess but the actual figures gleaned from the hard school of every day's operation of the plant as shown by the company's books.

WHAT IS A REASONABLE RETURN FOR AN ELECTRIC LIGHT UTILITY IN OHIO?

In the matter of the Cleveland Electric Illuminating Company, decided January 21, 1920, found in Public Utilities Reports Annotated, Vol. 1920-B, page 291, report of decisions of the Public Utilities Commission of Ohio, we find in the fourth proposition of the syllabus, the following:

> "A return of less than eight per cent. upon the investment in an electrical plant is not unreasonably high, a return of eight per cent. being reasonable."

The Commission in that case said, page 893:

> "A careful study of the actual operations of said company under its schedule now in force, shows that the public have not paid and the company has not received from any class of service or from all, a return of eight per cent. upon its investment, which rate the Commission found and still finds to be a just and reasonable return on the investment."

On the contrary it is shown that operating under its schedule, the company has received a net return of

7.25 per cent. on its investment as a whole, and of 7.43 per cent. on its investment within the city of Cleveland. If a rate of 7.25 per cent. on its investment as a whole and of 7.43 on its investment within the city of Cleveland be reasonable, certainly an eight per cent. return in a town the size of Hillsboro, Ohio, would be reasonable. We need not cite authorities in support of the proposition that the larger and more substantial the city, the less the rate required to be reasonable as against a smaller place.

In the case of the City of Lima v. Lima Telephone and Telegraph Company, before the Public Utilities Commission of Ohio, decided November 18, 1921, Vol. 1922-A, Public Utilities Reports Annotated, page 155 the fifth proposition of the syllabus is as follows:

> "A telephone company earning a rate of return of 6.4 per cent. was allowed increased rates."

In the matter of the appeal of the Lima Natural Gas Company, decided January 25, 1922, by the Public Utilities Commission of Ohio, see Annual Report of the Public Utilities Commission of Ohio, 1922, page 100, the following order was made:

> "That the appellant should be allowed to earn a return of eight per centum per annum upon the present value of its property."

In the matter of the appeal of the Hardin-Wyandot Lighting Company from the natural gas rate ordinance, passed March 23, 1923, found in the annual report of the Public Utilities Commission of Ohio for 1922, page

137, the following is included in the order that was adopted by the Commission:

"Return on valuation at eight per cent., $6528."

It will not be disputed by the adverse party that eight per cent. is conceded a fair return by the Public Utilities Commission of Ohio for lighting and gas plants, and the Commission in its orders and determinations used eight per cent. as the basis. It is a matter of common knowledge that since the war the minimum rate per cent. for loans in the middle west is six and one-half per cent. and most notes bear the rate of eight per cent.

Mobile Gas Co. vs. Patterson, 293 Fed., 208.

CHARACTER OF MANAGEMENT.

The only possible element found in the Commission's order which could tend to militate against the claim of the plaintiff herein is the following:

> "That, from its said investigation aforesaid, it is apparent that this plant has been uneconomically planned and constructed, in many regards inefficiently operated and the service conducted without that regard for attracting new business and encouraging the greater use of the product which would reflect the saving per unit incident to increased volume of output, recognized as a basic principle in the conduct of commercial enterprises."

In the very next sentence of the order of the Commission following the foregoing is this:

> "That, at this time the respondent, in recognition of its responsibilities in this regard, is actu-

> ally revamping its said plant for the purpose of securing an economical and efficient operation."

There is not a syllable of testimony to support this statement. The utility does not claim to have been revamping its electric plant at the time; indeed, it needed none.

There is no testimony whatever in the record that the plant was planned and constructed uneconomically, and there is no evidence of the results of any investigation on the part of the Commission **other than disclosed by this record.** In answer to the mere dictum that the plant was in many respects inefficiently operated, we have but to quote the testimony of the Commission's own engineer, Mr. Pierce, Record, p. 140:

> "Q. Do you consider the expenditures made by the Ohio Utilities Company in the conduct of their plant at Hillsboro as reasonable? A. I do.
>
> Q. Do you consider that the plant is efficiently and economically managed? A. Yes, sir.
>
> Mr. Barrere (counsel for the protestant): That is all."

It is nothing short of marvelous that the testimony of Mr. Pierce, still in the Commission's employ and for many years with them as an engineer, should not have been adopted by the Commission, and this when confirmed by Mr. White, the chief engineer from the inception of the Commission to the present time, with **no testimony to the contrary.**

Now as to the observation that the service was "conducted without that regard for attracting new business and encouraging the greater use of the product which

would reflect the saving per unit incident to increased volume of output, recognized as a basic principle in the conduct of commercial enterprises," let us make answer again by the record.

Mr. Pierce's supplemental report (Supplemental Record, p. 6) shows that from September, 1920, to August, 1921, the number of resident and commercial lighting customers increased from 887 to 916, and from August, 1921, to July, 1922, from 916 to 1000. In regard to the increase in business, let it be further said that the United States census report shows the population of Hillsboro in 1910 to be 4535; and in 1920 to be 4356. This discloses that the utility is well patronized in regard to its light plant in the town of Hillsboro in proportion to the population.

It may be asked at this point, how may this utility increase its business when it is denied the means for so doing by the limitation upon its expense? As to the difference between theory and practice in the operation of a plant, we wish to quote from the order of the Public Utilities Commission of Ohio itself on page 892 of P. U. R. 1920-B, in re Cleveland Electric Illuminating Company, where the Commission said this:

> "A careful study of the actual operations of said company under its schedule now in force shows that the public have not paid and the company has not received from any class of service or from all, a return of 8% upon its investment, which rate the Commission found and still finds to be a just and reasonable return on the investment."

Had the Commission done in the instant case what it did in the Cleveland case, we would not be here.

THE DECISION OF THE SUPREME COURT OF OHIO.

With great deference we refer to the decision of the Supreme Court of Ohio in this case, decided June 12, 1923, (Rec., p. 178). The distinguished tribunal got upon the wrong road to the proper destination by applying a principle of law not pertinent in rate cases, and out of line with the statute. We do not refer to this upon the theory that this court is concerned with the proper application of the Ohio statute, but as explanatory of the misconception of the Supreme Court of Ohio in the instant case. It always prompts a doubt in the mind of the average thinking man when the court plants itself not upon its own judgment, but upon its hesitancy to upset the judgment of another tribunal. Prima facie when resort is had to a line of reasoning that is based on an inability to say that the prior judgment is manifestly against the weight of the evidence, the conclusion is inevitable that the reviewing tribunal is not giving its own judgment.

The Supreme Court of Ohio instead of applying independent judgment to the facts of this case agreeably to the doctrine announced by this court in the case of Bluefield Water Works and Improvement Company v. Public Service Commission of the State of West Virginia, 262 U. S., 679;, 67 Law Ed. 1176, announced this unreasonable doctrine as its guide:

> "Applying such analogy, the findings of the commission should not be disturbed unless they are so

> manifestly against the weight of the evidence, and so clearly unsupported by it, as to show misapprehension, or mistake, or wilful disregard of duty."

The statute of Ohio, Section 544, is as follows:

> "A final order made by the commission shall be reversed, vacated or modified by the Supreme Court, on a petition in error, if upon consideration of the record such court is of the opinion that said order was unlawful and unreasonable."

The pole star of this statute is the independent judgment of the court itself.

This court in the case of Bluefield Water Works and Improvement Company v. The West Virginia Public Service Commission, 262 U. S. 679; 67 Law Ed. 1176, laid down this doctrine:

> "A public utility company, appealing from a commission order fixing rates alleged to be confiscatory, is entitled, under the due process clause of the fourteenth amendment, to the independent judgment of the court as to both law and facts."

The Supreme Court of Ohio in affirming the action of the Utilities Commission in the instant case ran counter both to the statute and to the doctrine laid down by this court, and, hence, the usual presumption in favor of the correctness of the order because affirmed by the court of last resort in the state is removed.

FEDERAL TAX AND EXCISE TAX.

In discussing the amount of operating expenses and in arriving at the rates which we have hereinbefore presented as resulting from the various valuations and allowances, we left entirely out of view two items of expense not provided for in the allowance made by the Commission under the head of operating expenses, and apparently overlooked by the Commission both in that connection and in its consideration of a fair return. These two items are not speculative, but as certain as death. One is the federal tax and the other is the excise tax under the laws of Ohio. The federal income taxes for 1922 were 12½ per cent of the net earnings, and if figured on the basis of the allowance made by the Commission for a fair return, that is to say $8703.00, these taxes would amount to $1087.87.

Section 5483 of the General Code of Ohio, effective since 1911, provides for a charge to and collection from electric light plants of 1.2 percent on the gross receipts of the company on its intrastate business each year. If we take the gross receipts at just what the Utilities Commission estimated them to be per year, towit, $53,563.00, the excise tax will be $642.75 for 1922. The sum of the federal income tax and the state excise tax for 1922 will, therefore, be $1730.62.

These amounts are not conjectural but absolute calculations based on the law and the allowance of the Commission. Deduct $1730.62 from the $8703.00, al-

lowed by the Commission, and we have left only $6972.38, or 4.8 percent on the valuation of the property as fixed by the Commission, that is $145,055.00.

The question of federal income tax did not arise in the hearing before the Commission for the reason that the decision of the Supreme Court of Ohio, reversing the holdings of the Utilities Commission of Ohio, and finding that federal income taxes were proper allowances as part of the operating expenses was not made until twelve days after the order of December 12, 1922, was made by the Commission.

REASONABLE RETURN

"Rates which are not sufficient to yield a reasonable return upon the value of the property used at the time it is being used to render public service are unjust, unreasonable, and confiscatory, and their enforcement deprives the public utility company of its property, in violation of the federal constitution."

Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia, 262 U. S. 679.

"A public utility is entitled to such rates as will permit it to earn a return upon the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties, but it has no constitutional right to profits such as are realized or anticipated in

nighly profitable enterprises or speculative ventures."

Water Works Co. v. Public Service Commission of the State of W. Va., Ibid.

"The return on investment which a public utility should be permitted to earn should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise money necessary for the proper discharge of its public duties."

Water Works Co. v. Public Service Commission of the State of W. Va., Ibid.

"Six percent is too low to constitute just compensation for supplying a city with water where, for many years, the income was less than five percent, and, for part of the time, approximated three percent after an allowance for depreciation." Ibid.

Judge Jones, speaking for the Supreme Court of Ohio in the case of the Ohio Bell Telephone Company v. The Public Utilities Commission of Ohio, 106 O. S. Rep. at page 270, said:

"While many factors enter into the reasonableness of a rate, we are reminded that the rights of the public must be conserved, and that the adjustment of rates must be just to both the public and the utility; that the cost of service be made as low to the public as may be consistent with the reasonable yield to the utility for the services rendered. In view of the fact that the utility became responsible for the federal income tax, the 5.7 percent yield would seem to be much lower than the return usually allowed to utilities of this character. When

it is considered that the federal income tax must be paid out of 5.7 percent, the conclusion is unavoidable that the net percent return is wholly inadequate."

"A return of 5¼ percent upon the minimum value of property of a public telephone corporation is wholly inadequate at a time when prevailing investment and interest rates are much higher than that."

State of Mo., ex rel, Southwestern Bell Telephone Co. v. Public Service Commission of Mo., 262 U. S. 276.

CONCLUSION

In conclusion we call the court's attention to a few decisions handed down since the rendition of the judgments in Southwestern Bell Tel. Co. v. Public Service Com. of Mo., 262 U. S. 276, and Bluefield, etc. v. Public Service Comm. of W. Va., 262 U. S. 679.

The Bluefield case was reheard by the Public Service Commission of W. Va., and the report of its action is found in Public Utilities Reports, Vol. 1924-D, page 325. In brief, the following allowances were made:

1. 3% for preliminary costs in valuation of a water works.
2. 4% for engineering and supervision in ascertaining reproduction costs.
3. 1½% for administrative and legal costs.
4. 3% for interest during construction.
5. 1½% for contingencies.
6. 10% for going value.
7. 8% on valuation for return on invested capital.

In the case at bar no allowance was made for going value.

Furthermore 6% was all the Commission pretended to allow on a grossly unfair valuation.

In the case of Joplin Gas Co. v. Missouri Pub. Service Comm., 296 Fed., 271, the court allowed a working capital of one month's income. In the instant case the allowance was based on one month's operating expenses plus one month's coal—considerably less than the allowance in the Joplin case, but even this the Commission in the instant case reduced.

The court also held that a rate under which a utility has been unable to earn 6%, and on occasion less than 5 % is confiscatory.

We have already referred to the case of Van Wert Gas Light Co. v. Public Utilities Commission of Ohio 106 O. S. 170. In this case the Gas Company appealed from an order of the Public Utilities Commission to the Supreme Court of Ohio, and the order of the Commission was affirmed (106 O. S. 170.) The company then went into the District Court of the U. S. for the Southern Dist. of Ohio, Eastern Division, seeking to restrain the enforcement of the order of the Public Utilities Commission which was affirmed in 106 O. S. 170 supra. In the action in the U. S. Court, heard by Donahue, Sater and Hickenlooper, the court said, in paragraph 2 of the syllabus:

> "The Supreme Court of Ohio in affirming this action of the Commission, apparently on the ground that the utility company was not entitled to a full judicial inquiry into the facts, with the indepen-

dent judgment of the court upon the facts as well as the law, denied to the plaintiff utility the judicial review which constitutes the due process of law to which it was entitled."

With this we are content. If this doctrine, which is merely reiterative of that laid down in the Bluefield case, is applied to the case at bar, the labor of this court is materially reduced. The opinion of the Supreme Court of Ohio, found on page 178 of the record, shows that no consideration whatever was paid by that court to the doctrines enunciated in:

S. W. Bell Tel. Co. v. Pub. Service Comm. of Mo., 262 U. S., 276.
Bluefield Waterworks Co. v. Pub. Service Comm. of W. Va., 262 U. S., 679.
Van Wert Gas Light Co. v. Pub. Utilities Comm. of Ohio, 299 Fed., 670.
Wilcox v. Consolidated Gas Co., etc., 53 Law Ed., 382.
Mobile Gas Co. v. Patterson, 293 Fed., 208.
In re Pac. Gas & Power Co., Pub. Utilities Reports, 1921-c, 385.
Bonbright v. Geary, 210 Fed., 44.
Pocatelo Gas & Power Co. v. Idaho Pub. Utilities Comm., P. U. R. 1923-c, 25.

Such being the case we respectfully submit that the judgment of the Supreme Court of Ohio should be reversed.

TIMOTHY S. HOGAN,

Counsel for The Ohio Utilities Company, Plaintiff in Error.

IN THE

Supreme Court of the United States

October Term, 1924.

No. 210.

THE OHIO UTILITIES COMPANY, A CORPORATION,
Plaintiff in Error,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO,
Defendant in Error.

BRIEF ON BEHALF OF DEFENDANT IN ERROR, THE PUBLIC UTILITIES COMMISSION OF OHIO.

STATEMENT OF FACTS IN CASE.

The plaintiff in error is a public utility corporation of Ohio which, among other operations and utility plants owned and operated by the company, is engaged

in the gas and electric lighting business in the city of Hillsboro, Ohio. The company is also engaged in the manufacture of ice in Hillsboro. This case arose over an order of the Public Utilities Commission of Ohio, which modified in certain minor respects the schedule of rates filed by the plaintiff in error covering the electric lighting service for the village of Hillsboro.

The schedule filed by the plaintiff in error provided for a charge on domestic and commercial lighting of 15c per kilowatt hour for the first 200 kilowatt hours net; 12c per kilowatt hour for all over 200 kilowatt hours net. The Commission reduced these rates for residence and commercial lighting to 12c per kilowatt hour for the first 200 kilowatt hours net, and 10c per kilowatt hour for all over 200 kilowatt hours net. The minimum charge for private garage automobile charging was reduced from $2.00 to $1.00 per month. We shall disregard the latter aspect of this case for the reason that in the whole village of Hillsboro there are only two or three electric automobiles where private charging is carried on. This would not be of sufficient importance to make any change, were it not that the $2.00 minimum charge would be unfair to those very few consumers who use this facility. As far as the income to the company is concerned, it may properly be disregarded.

After the schedule as filed by the plaintiff in error had been suspended by the Public Utilities Commission, a bond was filed under and by virtue of the statutes of Ohio, which bond permitted the charging of the rates

fixed in the schedule by the Ohio Utilities Company on the express condition that if the finding of the Commission should be for a lower rate and finally sustained that the excess collected over and above the rate fixed by the Commission should be returned by the company to the patrons paying the same. This sum so collected has been impounded for that purpose and awaits the decision of this court either to become a part of the company's assets or to be returned to the users.

The order of the Commission was originally made on the 5th day of July, 1921, providing for the reductions hereinbefore noted. On July 25, 1921, the Ohio Utilities Company filed an application for a rehearing before the Public Utilities Commission. On July 26, an oral argument was held on this application for a rehearing. Briefs were filed in support of the same and on August 19, 1922, the Public Utilities Commission of Ohio, the defendant in error, granted to the Ohio Utilities Company a rehearing in this case. The rehearing was held on the 17th of October, 1922, at which time further testimony was taken and a further record made. This hearing was then adjourned until the 2nd day of November, 1922, when the hearing was resumed. An additional bond was required of the company on the 4th of November, 1922, and on December 12, thereafter, an order was made by the Public Utilities Commission fixing the rates the same as in the order of July 5, 1921.

After this order was made and on December 29, the Ohio Utilities Company filed an application for a re-

hearing. On January 10, this application for a rehearing was denied. January 23, a petition in error was filed in the Supreme Court of Ohio. Thereafter, the Supreme Court of Ohio sustained the order of the Public Utilities Commission.

The following is a copy of the per curiam opinion of the Supreme Court of Ohio in the case, 108 Ohio State, page 143:

> "This proceeding comes into court upon error to the Public Utilities Commission of Ohio. The facts incident to the solution of the problem presented are as follows:
>
> The Ohio Utilities Company, a corporation organized and existing under the laws of the State of Ohio, is engaged in the business of manufacturing and selling gas and electricity in the village of Hillsboro, Highland county. In the summer of 1920 the Hillsboro Business Men's Association filed a protest with the Public Utilities Commission against rates that had heretofore been filed by the Ohio Utilities Company, one for gas service, known as No. 2, and the other for electric service, known as No. 3, such schedules being effective August 26, 1920. Upon the filing of this protest, the schedules were suspended, but were afterward put in force upon the utilities company filing a bond with the Commission. On July 5, 1921, the Public Utilities Commission entered its order and findings, as to the rate for electric service, lower than the rate schedule theretofore in force. Later a rehearing was granted by the Commission, and on January 10, 1923, the final order and decision was made by the Public Utilities Commission, fixing the rate for residence and commercial lighting at 12 cents per kilowatt hour for the first 200 kilowatt hours per month net, 10 cents per kilowatt hour for all over 200 kilowatt hours per month net, and it was further ordered that the Ohio Utilities Company

refund in cash or by credit upon current bills by the 10th of June, 1923, any difference between these rates and the charges imposed upon its consumers from and after the 26th of August, 1920, to all of which orders, acts and proceedings of the Public Utilities Commission the Ohio Utilities Company at the time excepted. Upon denial of an application for a rehearing these proceedings in error in this court were prosecuted.

There are 12 grounds of error set forth, but the same may be generalized under the head that the decision and order of the Public Utilities Commission are contrary to law and contrary to the manifest weight of the evidence.

In determining this question, this court is to be guided by the rule laid down in the case of Village of St. Clairsville v. Pub. Util. Com., 102 Ohio St., 574, at page 583, 132 N. E., 151, at page 153, in the following language:

'Let us next inquire whether the finding and order are against the weight of the evidence. On this point the inquiry should not be to determine whether there is a scintilla of evidence to support the finding of the Commission; but, on the contrary, we are of the opinion that this court should examine the record with a view of determining whether the findings of the Commission on the facts are reasonably supported by the evidence adduced at the hearing. Inasmuch as this is the first review of the evidence, the situation of this court in such matters is analogous to that of the Court of Appeals in weighing and reviewing the evidence in an error proceeding from the Court of Common Pleas. Applying such analogy, the findings of the Commission should not be disturbed unless they are so manifestly against the weight of the evidence, and so clearly unsupported by it, as to show misapprehension, or mistake, or willful disregard of duty. This court has not had the opportunity of observing the demeanor of the wit-

nesses, and is therefore not as competent to weigh the evidence as the Commission should be.'

And attention is called to the further announcement of this court, to be found in the first proposition of the syllabus of Hocking Valley Ry. Co. v. Pub. Util. Comm., 92 Ohio St., 362, 110 N. E., 952:

'This court will not substitute its judgment for that of an administrative board, created pursuant to the act of the legislature, as to matters within its province. Before the court will interfere with an order of the railway commission, or its successors, it must appear from a consideration of the record that the action of the Commission was unlawful or unreasonable.'

Applying these principles heretofore announced by this court to the record in the case at bar, it is proper for us to state at the outset that we are particularly impressed with the very thorough manner in which the Public Utilities Commission tried, considered, and announced its conclusion in the instant case. There was not only the original hearing, but the rehearing, the testimony of the witnesses, the examination by the commission's experts, assisted by the exhaustive arguments, briefs and research of counsel.

It is not necessary and would not be profitable to incorporate in this opinion a detailed recital or discussion of the evidence in the record, the same being too voluminous. Sufficient is it to say that it is composed of the testimony of the witnesses offered by the plaintiff in error, the exhibits and the result of the research of the experts and testimony of the witnesses called for cross-examination by the protestant, the Business Men's Association of the Village of Hillsboro.

The case of the protestant was not so much made upon its own testimony as upon the cross-examination of the witnesses called by the plaintiff in error, as well as by the analysis of the figures submitted."

Now the gist of the finding of the Public Utilities Commission, omitting its conclusions as to figures and values, is:

"That, from its said investigation aforesaid, it is apparent that this plant has been uneconomically planned and constructed, in many regards inefficiently operated, and the service conducted without that regard for attracting new business and encouraging the greater use of the product which would reflect the saving per unit incident to increased volume of output, recognized as a basic principle in the conduct of commercial enterprises."

Applying that doctrine to the conclusion that the Public Utilities Commission reached—that the original plant as purchased by the plaintiff in error required heavy expenditures to make it at all efficient, and that the public should not be penalized for the omissions of the administrator of the company's affairs—the actual finding of the commission was that P. U. C. O. No. 3, providing for a 15-cent per kilowatt hour rate for the first 200 kilowatt hours net, etc., was unjust, unreasonable, and unlawful, and that the following rates and charges were just and reasonable.

"Residence and commercial lighting: 12 cents per k.w.h. for the first 200 k.w.h per month net; 10 cents per k.w.h for all over 200 k.w.h. per month net.

"Private garage automobile charging: Minimum bill, $1.00 per month net."

It is very plausibly argued by plaintiff in error that from an analysis of the figures submitted in the report of the experts of the commission the rates provided for in order No. 3 are just and reasonable; but it must be understood that in reaching the conclusions it did the commission gave consideration not only to the figures submitted by the experts, and what the property had been able to earn in its past, but also to what under a proper management and economic handling would be a just and reason-

able rate for the commodity offered by the plaintiff in error, considering its possibilities in the future.

The commission heard the witnesses, observed their demeanor upon the witness stand, examined the briefs of counsel, and heard at length their oral arguments.

Was this finding, therefore, mainfestly against the weight of the evidence and contrary to law? While the commission is not a court, it exercises quasi judicial functions, and while its conclusions are not to be regarded as judgments, but as orders and regulations, yet it must be conceded that the exercise of a sound discretion in the consideration of evidence, the weight to be given it, and the justness of conclusions to be drawn from the facts shown by a record submitted to the commission, is within the purview of its powers.

The fact that the recommendations made by the experts of the commission were not followed in full would not justify a reversal as testimony of such experts is to be regarded the same as that of any other witness, or means of gathering information, which may be weighed and considered and given such weight as to the commission seems proper.

The commission having given a hearing and rehearing, and exercised careful consideration for the rights of the plaintiff in error in the premises, we cannot say that its orders and conclusions are so manifestly against the weight of the evidence as to justify us in finding them unreasonable and unlawful.

The order of the Public Utilities Commission is therefore affirmed.

Order affirmed.

Marshall, C. J., Robinson, Jones, Matthias, Day and Allen, JJ., concur. Wanamaker, J., not participating.

From the decision of the Supreme Court of Ohio this case now comes before the Supreme Court of the United States on error.

ARGUMENT.

First: In the very beginning of the consideration of this case we are confronted by an untried rate fixed by the Commission. The rate charged up until the time of the proceedings before the Commission was considerably lower than the rate finally fixed by the Commission. The rate which the company has been charging under bond, as hereinbefore set out, has been higher than that fixed by the order of the Commission.

The testimony in the first hearing before the Commission was in regard to the return produced by the old rate which was raised by the Public Utilities Commission in all respects as asked for by the plaintiff in error except as to the single item of residence and commercial lighting. At the rehearing the testimony offered was in regard to the rate asked for by the plaintiff in error, the same being charged under bond to refund.

Second: The valuation of the company's property was made at a time when prices were abnormally high, when the cost of all of the necessaries incident to the business was excessive and conditions generally were unstable.

Third: We are considering in this case the highest rate charged in any city or village of the State of Ohio, with the possible exception of one which has a 15c rate and that is in a case of municipal ownership and could not be compared to the present rate.

Fourth: We are considering a rate charged by a com-

pany which was specifically and definitely found by the Public Utilities Commission of Ohio and by the Supreme Court of the State to be inefficiently managed and the property of the company to be in bad repair?

Fifth: This court has under consideration a schedule fixed by the Public Utilities Commission of Ohio, which schedule is a decided increase over the rates which had been charged for a long time by the same plant and for the same character of service. The Commission practically confirmed the schedule submitted both in regard to the gas service and the electric light service with the one exception of the domestic consumers of electricity.

Sixth: The Public Utilities Commission has jurisdiction over service, matters of discrimination in quality of service rendered as well as over the question of rates and should justly consider service in fixing rates.

Seventh: Under all the facts in this case no confiscation of property without due process of law is shown.

We will consider the above propositions in their order.

First: Where a Commission prescribes a rate, there is a presumption that that rate is reasonable and that the Commission has acted within its power. It is conceded that if the rate is fixed under ordinary circumstances and there is no countering influence, that that rate must allow a fair return upon the reasonable value of the property at the time it is being used for the public. The statutes of Ohio expressly state what shall constitute the property used and useful and how a valu-

ation of the same may be made. We refer to Section 499-8-9 of the General Code of Ohio, as follows:

499.8. "The commission for the purpose of ascertaining the reasonableness and justice of rates and charges for the service rendered by public utilities or railroads of this state, or for any other purpose authorized by law, may investigate and ascertain the value of the property of any public utility or railroad in this state, used or useful for the service and convenience of the public. At the request of the council of any municipality the commission after hearing and determining that such a valuation is necessary may also investigate and ascertain the value of the property of any public utility used and useful for the service and convenience of the public where the whole or major portion of such utility is situated in such municipality. Every public utility or railroad shall furnish to the commission, its engineers, experts, or other assistants from time to time and as the commission may require maps, profiles, contracts, reports of engineers and other documents, records and papers or copies of any or all of the same, in aid of any investigation and ascertainment of the value of its property, and shall grant to the commission or its agents free access to all of its premises and property and its accounts, records and memoranda whenever requested by any such duly authorized agent, and every public utility or railroad is hereby directed and required to cooperate with and aid the commission in the work of the valuation of its property in such further particulars and to such extent as the commission may require and direct. The commission shall have such power to make all rules and regulations, as to it may seem necessary, to ascertain the value of each and every utility or railroad in the state. (106 v. 225; 103 v. 808, par. 21.)

499-9. The commission shall prescribe the details of the inventory of the property of each public utility or railroad in the state; and such inventory

shall include all the kinds and classes of property, with the value of each, owned by each public utility or railroad, used and useful for the service and convenience of the public. In ascertaining the value of the various kinds and classes of property of each public utility or railroad, the commission shall have authority to ascertain and report in such detail as it may deem necessary as to each piece of property owned or used by such public utility or railroad to show separately the following facts:

A. The original cost, if any, of each parcel of land owned and used by such public utility or railroad, and a statement of the conditions of acquisition; whether by direct purchase, by donation, by exercise of the power of eminent domain or otherwise.

B. The value as of date certain, of each parcel of land owned and used by such public utility or railroad, by comparison with the value of contiguous and neighboring parcels of land, and land of similar character as to location and use.

C. If there shall be any additional value to such utility or railroad by reason of the ownership by it of one or more parcels of land and its use as a continuous right of way for transportation purposes or for other purpose, such additional value shall be separately and specifically set forth for each parcel.

D. The cost of new production as of date certain of all physical property other than land, owned and used by such public utility or railroad, showing the values of the separate items comprising such property, together with the unit basis of such valuation.

E. Depreciation, if any, from the new reproductive cost as of a date certain, for existing mechanical deterioration, for age, for obsolescence, for lack of utility or for other cause, the percentage and amount of each class of depreciation, if any, to be specifically set forth in detail.

F. The net value as of a date certain, of all

physical property other than land owned by such utility or railroad, to be derived by deducting the sum of the amounts of depreciation from the sum of the new reproductive costs.

G. If there shall be any additional value given to the value of the property of a public utility or railroad due to the possession of a franchise to perform a public service, or for good will or for financing, such additional value shall be separately and specifically set forth, together with the basis for the computation or estimate of such additional value.

H. A duplicate copy of the record of every physical valuation of a public utility or railroad shall be furnished to the Ohio tax commission, on request, for its use in ascertaining the value of the property of such utility or railroad for purposes of taxation, and upon demand any person or corporation owning or operating a public utility or railroad shall be furnished with a copy of the valuation of his or its property.

Such investigations and report shall show separately the property used and useful to such utility or railroad in the furnishing of the service to the public, and the property held by such utility or railroad for other purposes, and such other items concerning values and methods of making valuations as the commission may deem proper; which said inventories and reports shall be filed in the office of the commission for the information of the governor and the general assembly.

When a rate has been fixed by the Commission duly authorized to establish the same, the burden of proof is upon the utility to show that the rate fixed does not afford a fair return upon the reasonable value of the property used and useful for the public at the time the rate is in effect. The burden of proof is not only upon

the plaintiff in error in this case to show that the income is confiscatory, but that the operation of the plant is efficient and economical and that the service rendered is worth the charge asked.

The Commission and the Supreme Court of Ohio were considering not only the interest of the company but as well the service which is rendered and the welfare of the public. The rate fixed must be consistent with all the circumstances surrounding the particular case and no hard fast rule of return can be fixed by any court with the determination that everything producing a lower return is confiscatory and a higher return is not so.

We wish to refer to the case of Wilcox et al. vs. The Consolidated Gas Company, 212 U. S., page 20. The syllabus in that case is particularly applicable to the case at issue. The pertinent parts read as follows:

> "Rates, when fixed by legislative authority, for public service corporations, should allow a fair return upon the reasonable value of the property at the time it is being used, but the legislative act cannot be declared invalid by the courts unless the rates are so unreasonably low that their enforcement would amount to taking the property for public use without compensation. San Diego Land and Town Company cases, 714 U. S., 739; 189 U. S., 439. Except in very clear cases, courts should not interfere with state rate legislation before the legislation goes into effect. Knoxville vs. Water Co. Ante p. 1.
>
> Value of the property employed being an essential element in determining whether a rate is or is not confiscatory, and being also largely a matter of opinion, where the determination of the question

depends upon such value, a court of equity should hesitate to interfere by injunction to suspend the rate before it goes into operation and **a fair trial has been made.**

Franchises of public service corporations are property and cannot be used by others without compensation, and where a state has by legislative enactment permitted such corporations to capitalize such franchises, their value at the time of such capitalization should be included in the value of the property as an element for fixing rates; but no increased value of such franchises should be allowed. Public service corporations, such as gas companies, are subject to the legislative right to fix rates which permit not more than a fair return on the property used. Whether a rate yields such a fair return as not to be confiscatory, depends upon circumstances, locality and risk, and no particular rate can be established for all cases.

In estimating value of franchises for the purpose of fixing rates, it is immaterial that the corporation is taxed on a greater value than that allowed if it charges its taxes as operating expenses in determining net income. Where a public service corporation has a monopoly, such as of supplying gas in a large city, 'good will' cannot be considered as an element of value of the property employed."

Mr. Justice Peckham, in discussing the Wilcox case made some suggestions applicable to this case, particularly the following:

"The value of real estate and plant is to a considerable extent matter of opinion, and the same may be said of personal estate when not based upon the actual cost of material and construction. Deterioration of the value of the plant, mains and pipes are also to some extent based upon opinion. All these matters made questions of value somewhat uncertain; while added to this is an alleged pros-

pective loss of income from a reduced rate, a matter also of much uncertainty, depending upon the extent of the reduction and the probable increased consumption, and we have **a problem as to the character of a rate which is difficult to answer without a practice from actual operation of the rate.**

Of course there may be cases where the rate is so low, upon any reasonable basis of valuation, that there can be no just doubt as to its confiscatory nature, and in that event there should be no hesitation in so deciding and in enjoining its enforcement without waiting for the damage which must inevitably accompany the operation of the business under the objectionable rate. But where the rate complained of shows in any event a very narrow line of division between possible confiscation and proper regulation, is based upon the value of the property found by the court below, and the division depends upon opinions as to value, which differ considerably among the witnesses, and also upon the results in the future of operating under the rate objected to, so that the material fact of value is left in much doubt, a court of equity ought not to interfere by injunction before a fair trial has been made of continuing the business under that rate, and thus eliminating as far as is possible, the doubt arising from opinions opposed to facts."

In showing that a rate of return cannot be hard and fast for any part of the property used and useful, particularly when the same is confused with other like property or properties, we call the attention of the court to the New York and Queens Gas Company vs. McCall case, 245 U. S., page 345. The syllabus of the case reads as follows:

"An order of a state public service commission requiring a city gas company to extend its mains and service pipes to meet the reasonable needs of a

growing community within the city, cannot be deemed arbitrary or capricious, and so contrary to the due process clause of the Fourteenth Amendment, where it appears that the company was accorded full hearing before the commission and on review in the state courts, that it is the only one authorized to serve the community in question with gas, and that the rate of return upon the cost of the extension, though low initially, from 2¼% to 4% per annum, will probably soon become ample with the growth of the community; and where, moreover, the record does not show, and the company does not claim, that the comparatively small loss asserted would render its business as a whole unprofitable."

Mr. Justice Clark in commenting on this case, as the same is important in the matter at issue, used the following language:

"The Court of Appeals of New York decided that the public service commission was created to perform the important function of supervising and regulating the business of public service corporations; that the state law assumed that the experience of the members of the commission especially fits them for dealing with the problems presented by the duties and activities of such corporations; that the courts in reviewing the action of the commission have no authority to substitute their judgment as to what is reasonable in a given case for that of the commission, but are limited to determining whether the action complained of was capricious or arbitrary and for this reason unlawful; and that it was clearly within the power of the commission to make the order which is here assailed.

This interpretation of the statutes of New York is conclusive, and the definition, thus announced, of the power of the courts of that state to review the decision of the public service commission, based as it is in part on the decision in Interstate Com-

merce Commission vs. Illinois Central Railroad Company, 215 U. S., 245, 470, differs but slightly if at all, from the definition by this court of its own power to review the decisions of similar administrative bodies, arrived at in many cases in which such decisions have been under examination. Typical cases are: Baltimore and Ohio Railroad Company vs. Pitcairn Coal Company, 215 U. S., 481-44; Kansas City Southern Railway Company vs. United States, 231 U. S., 423, 443-4; Louisiana Railroad Commission vs. Cumberland Telephone & Telegraph Company, 212 U. S., 414, 420-2; Interstate Commerce Commission vs. Union Pacific Railway Company, 222 U. S., 541-547, and the Cedar Rapids Gas Company vs. Cedar Rapids, 223 U. S., 655, 668 It is the result of these and similar decisions, that while in such cases as we have here this court is confined to the federal question involved and, therefore, has not the authority to substitute its judgment for that of an administrative commission as to the wisdom or policy of an order complained of and will not analyze or balance the evidence which was before the commission for the purpose of determining whether the present bond rates for or against the conclusion arrived at, yet it will, nevertheless, enter upon such an examination of the record as may be necessary to determine whether the federal constitutional right claimed has been denied, as, in this case, whether there was such a want of hearing or such arbitrary or capricious action on the part of the commission as to violate the due process clause of the constitution."

In the case of the Lincoln Gas & Electric Light Company vs. the City of Lincoln and others, to be found in Volume 250, United States Reports, page 256, the court in the syllabus at page 258 holds as follows:

"Having regard for the entire period under investigation, and in the presence of many doubtful

items, this court cannot hold the rate ordinance in question void, in the absence of an actual and timely test of its practical operation. The decree dismissing the bill without qualification is so modified as to be expressly without prejudice to the commencement of a new suit, in which complainant may show if it can, as a result of its practical test since May 1, 1915, or upon evidence of values, costs of operation and rates of return upon capital as they stand when such suit is brought and are likely to continue, that the rate in question is confiscatory under the new conditions. P. 268.

The court notices judicially that, principally owing to the war, costs of labor and supplies have advanced greatly since the ordinance was adopted, and largely since the case was last heard in the court below, and that annual returns upon capital and enterprise of world over have materially increased, so that what would have been a proper return for capital in gas plants and other public utilities a few years ago furnishes no safe criterion for the present or the future.

Mr. Justice Pitney in discussing the case at page 266, used the following language:

'The attack upon the rate ordinances brings under consideration questions of the valuation of the plant, the proper method of estimating and applying depreciation charges, questions of working capital, going concern value, the propriety of various items of operating expense, the rate of return that reasonably ought to be allowed upon capital invested in a plant and business of this character in Nebraska, and the other questions usually in such cases. The special master conducted a patient and elaborate investigation. An enormous mass of evidence was produced before him, and analyzed in his report. In abridged form, it occupies nearly two thousand pages of printed transcript in this court, besides numerous tabular exhibits. It would be impossible, within reasonable limits, to recite

> the substance of the evidence or review the master's findings. We do not feel called upon to do this. Knoxville vs. Knoxville Water Company, 212 U. S., 1, 17. * * * The decree dismissed the bill, however, so far as it related to the rate ordinance, without reservation or qualification. Perhaps it would go without saying, but in our opinion the decree ought to be modified so as to permit complainant to make another application to the courts for relief against the operation of the ordinance hereafter, if it can show, **as a result of its practice of the dollar rate since May 1, 1915,** or upon evidence respecting values, cost of operation, and the current rates of return upon capital as they stand at the time of bringing suit and are likely to continue thereafter, that the rate ordinance is confiscatory in its effect under the new conditions.' "

It is apparent, therefore, from the foregoing authorities that there should be a trial of the rate fixed by the Commission before the same is set aside by this court, on the grounds of confiscation.

Second: It is a matter of common knowledge that the years 1919 and 1920 immediately following the war were the years when the cost of everything was abnormal. Wages were higher than before or since, and particularly was the price of coal beyond all reason. It will be recalled that at this time both the Federal government and the governments of the states were using every effort possible by commissions, boards and otherwise to keep the price of coal within reasonable bounds. Even then it was impossible to do so as shown by the record in this case. At page 56 of the record, the cost of coal at the time this rate was put in effect and during the time when the expenses of the

company are being used to show a confiscatory rate, coal was costing $10.45 at the mines with an additional freight rate of $2.38 to Hillsboro. This is unprecedented and has not been the condition since that time except for a very few months. At page 43 in reply to questioning by Mr. Waltermire, Mrs. Bennett, the manager, admitted that there was an increase in operating expenses in September, the first month under the new rate, of $900.00. It is significant that this is the month when the company was testing the new rate. At page 44 of the record, Mr. Martin, manager of the plaintiff in error, unsatisfactorily attempts to explain the increased expenses and then confesses that he knows of no conditions in Hillsboro which would make the rate higher than in other Ohio towns of similar size. The further fact exists that the valuations made by the valuation engineers of the Public Utilities Commission was made during the time of the war when all prices had increased tremendously and were out of all proportion to the amounts really expended for the materials when they were purchased. Mr. Pierce, the valuation engineer of the Commission, testified before the Commission and there stated that the valuation placed upon the property of the company was fixed at the reproduction cost new less depreciation. Mr. Pierce further testified that depreciation was allowed upon the total value of the property, as fixed, even on organization expense and other intangible values. At page 133 of the record Mr. Pierce testified they did not take into consideration the original cost price of

any of the property. The rule laid down in Smythe vs. Ames, 169 U. S., 466, has been the landmark and guiding star in all valuation cases. The rule is as follows:

> "The basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway railway under legislative sanction must be the fair value of the property being used by it for the convenience of the public; and in order to ascertain that value, the original cost of construction, the amount expended in permanent improvement, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by the statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience; and on the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

It will be observed in applying the rule laid down in the above case which has so often been sustained by this court that there are many factors which enter in the valuation for rate making purposes and that the Public Utilities Commission of Ohio and the Supreme Court of the state were justified in changing values fixed by the engineer of the Commission in the light of all the facts surrounding this case, especially the enormously high prices prevailing at the time.

Third: Taking Mr. Martin's testimony, above referred to, and let it be remembered that Mr. Martin is the vice-president, general counsel, secretary-treasurer of the Ohio Utilities Company, to the effect that there is no condition in Hillsboro which would justify a higher rate than in similar Ohio towns, the record shows the schedule submitted to be unjustified and the order of the Commission to be fair and lawful.

On pages 136 and 137 of the record the court will note a discussion of towns of similar size and location in Ohio with a comparison of the rates in Hillsboro. It will be observed that in some of the cases the rate asked for in Hillsboro is almost twice that collected in other towns of the state. An attempt is made to explain this by showing that water is scarce. There is not one word of testimony to show that the plant is in any way different from those located in the other towns of Ohio or that the cost of machinery is higher. The Commission was justified in considering this factor.

Fourth: The Public Utilities Commission, from its examination of witnesses and its independent investigation, found as follows:

> "That, from its said investigation aforesaid it is apparent that this plant has been uneconomically planned and constructed, in many regards inefficiently operated, and the service conducted without that regard for attracting new business and encouraging the greater use of the product which would reflect the saving per unit incident to increased volume of output, recognized as a basic principle in the conduct of commercial enterprises.
>
> That, at this time the respondent, in recognition of its responsibilities in this regard, is actually re-

vamping its said plant for the purpose of securing an economical and efficient operation.

That the public may not be penalized by extortionate rates for the omissions of the administration of a public utility's affairs.

That, under an efficient administration and economical conduct of respondent's electrical plant in the said village of Hillsboro, Ohio, the schedule of rates and charges provided and prescribed by the order, made and entered herein as of date July fifth, 1921, will produce an annual gross revenue of $53,563.00, an amount sufficient to pay the above reasonable cost of furnishing said service, and provide the said depreciation reserve charge and the said net return upon repsondent's said property."

The Supreme Court of Ohio in sustaining the order of the Public Utilities Commission reviewed all of the evidence and the findings, particularly commenting upon the finding of the Commission that the plant is inefficiently and uneconomically operated and commenting further upon the thoroughness with which the Commission had gone into this phase of the case, all the time sustaining both the action of the Commission and its finding.

The court will observe this decision, pages 178, 179, 180 and 181 of the record, also being quoted in the beginning of this brief. It is only necessary to refer to a few facts in the record to determine that the judgment of the Commission and of the Supreme Court of Ohio was in this particular regard proper.

Mr. Pierce, upon whom the plaintiff in error relies very largely for its case in this court, at the bottom of

page 161, in commenting upon the service and the condition of the equipment, used the following language:

> "In considering the above cost of service per year, I wish to call attention to conditions obtaining the past year which tend to make operating costs higher than they probably will be for the next year. The gas holder has leaked during the entire past year and excessively the past few months, making it necessary to produce more gas than will be required after the new holder is installed. The capacity of the present holder is not sufficient for the most economical manufacture of gas at Hillsboro. Uniform temperatures are not maintained in the retorts, causing excessive wear of the benches and reports. The quality of coal has been very poor, requiring larger quantities to be used than probably will be required next year. The coke revenues production and quality should also increase with better grade of coal."

These comments certainly reflect upon the business efficiency of the company and the operating of the plant at Hillsboro.

It will be further observed that the Ohio Utilities Company maintains an office with an administrative force in the city of Columbus, Ohio, a part of the cost and expense of which is apportioned to the Hillsboro plant, thus adding an increased burden to the operating expenses and, of course, in this proceedings the company is attempting to charge that against the subscribers in Hillsboro. Furthermore, shortly after the purchase of this property in Hillsboro without any showing for the need of the same and with an abandonment of the office formerly used at the plant, the building which had been particularly constructed for

office purposes, a new office was opened down near the center of the town of Hillsboro with an increased rental cost and increased operating expenses. There was no need for this office as far as the record goes, but that is to be charged back against the subscribers under this new management by increased rates. At page 92 of the record the monthly cost of the uptown office in Hillsboro was put at from $300.00 to $350.00 per month, by a witness for the company.

We wish to refer the court to pages 54, 56 and 57 as a few of the instances when the service was shown not to be good. Yet Mr. Martin, the vice-president, manager and counsel for the company testified that he paid about $170,000 for the gas plant, the electric light plant and the ice plant, at page 119 of the record, when the same was listed for taxes at $30,000.

At page 51, of the record Mrs. Bennet, the manager of the plant, testified as follows:

"We junked everything that was in the place after he left." Mrs. Bennet referred to Mr. Beecher from whom this plant was purchased, yet there is not one word of testimony throughout the record showing a complaint of the service rendered prior to the time that the company was purchased by the Ohio Utilities Company, the plaintiff in error. It should be remembered in this connection that at the time the purchase was made the whole property was valued for taxes in Ohio, and Ohio requires taxation values to be the true value in money at $30,000.00.

At page 120, Mr. Martin says that the amount ex-

pended on the light plant, which is the plant here in question, is uncertain and that his figures would be only an estimate. The record really shows no improvement whatsoever on the lighting property. The foregoing facts certainly justified the Commission in finding inefficient management and that the property of the company was in bad repair.

The whole record seems to make a case of an effort on the part of Mr. Martin to buy in this property at an enormous cost, as he testified, to clear up the situation, then through additional office rent, additional expenditures for help and management, additional expenditures for improvements, needed, or otherwise, to secure a higher rate and place the burden of his excessive purchase price and of the organization which he was building up in Columbus, Ohio, to supervise these many properties upon the subscribers and consumers.

The Public Utilities Commission was justified in finding poor management.

Fifth: The finding of the Commission in so far as it effected the schedule of rates filed by the plaintiff in error is to be found at page 143 of the record and reads as follows:

> "The commission, taking into consideration the value of respondent's said property, used and useful in the furnishing of said service, the cost of furnishing the same, and the necessity for making reservations for income for depreciation and contingencies, therefore further finds:
>
> That the said proposed rates and charges set forth in said schedule P. U. C. O. No. 3, for the following classes and kinds of service, to wit:

Residence and commercial lighting: 15c per k. w. h. for the first 200 k. w. h. net; 12c per k. w. h. for all over 200 k. w. h. net.

Private garage automobile charging: Minimum bill, $2.00 per month; are excessive, unjust, unreasonable and unlawful.

That just, reasonable and lawful rates and charges for the furnishing of the aforesaid classes of service in said village are:

Residence and commercial lighting: 12c per k. w. h. for the first 200 k. w. h., net; 10 cents per k. w. h., for all over 200 k. w. h. net.

Private garage automobile charging: Minimum bill, $1.00 per month."

The comparison of the new rate, as fixed by the Commission with the old rate of the company is shown at page 67 of the record. It will be there seen that a substantial increase was allowed except in the residence and commercial lighting and in that case a substantial increase was allowed on the first 200 kilowatt hours used. A large majority of the consumers do not get outside of this increase in rate. A 100% increase was allowed in the minimum charge on residence and commercial lighting. There is no testimony in the record anywhere to show the difference between the income which would be produced by the rate fixed by the Commission and the rate which has been collected under bond. The rate fixed by the Commission might in experience be a just, fair and equitable rate which would produce the largest income to the company, the consumers being satisfied with the same and the company experiencing an increased consumption of electricity and a larger number of subscribers.

There is no testimony in the record showing that the service was any better under the new rate than under the old or that there had been any real improvement in the conduct of the company's business. Furthermore, there was no attempt made on the part of the company to show that the service rendered justified the charge asked for and that is one of the requirements for a just and legal rate just as well as that it be not confiscatory.

Sixth: The Public Utilities Commission of Ohio has jurisdiction over service rendered, matters of discrimination, kind and quality of service, as well as jurisdiction over rates. The public utility statute in Ohio particularly giving this authority is as follows:

> G. C. 614-23. "Whenever the commission shall be of the opinion, after hearing, that any rate, fare, charge, toll, rental, schedule, classification or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted or proposed to be rendered, charged, demanded or exacted is, or will be, unjust, unreasonable, unjustly discriminatory or unjustly preferential or in violation of law, or the service inadequate, or that the maximum rates, charges, tolls or rentals chargeable by any such public utility are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, the commission shall, with due regard among other things, to the value of all of the property of the public utility actually used and useful for the convenience of the public, excluding therefrom the value of any franchise or right to own, operate or enjoy the same in excess of the amount, (exclusive of any tax or annual charge) actually paid to any political subdivision of the state or county, as the consideration for the grant of such franchise or

right; and exclusive of any value added thereto by reason of a monopoly or merger and to the necessity of making reservation out of the income for surplus, depreciation and contingencies, and all such other matters as may be proper, according to the facts in each case, fix and determine the just and reasonable rate, fare, charge, toll, rental or service to be thereafter rendered, charged, demanded, exacted or collected for the performance or rendition of the service, and order the same substituted therefor; and thereafter, no change in the rate, fare, toll, charge, rental, schedule, classification or service shall be made, rendered, charged, demanded, exacted or charged by such public utility without the order of the commission and any other rate, fare, toll, charge, rental, classification or service shall be deemed and held to be unjust and unreasonable, prohibited and unlawful. Upon application of any person or any public utility, and after notice to the parties in interest and opportunity to be heard as provided in this act for other hearings, has been given, the commission may rescind, alter or amend an order fixing any rate or rates, fare, toll, charge, rental, classification or service, or any other order made by the commission. Certified copies of such orders shall be served and take effect as provided for original orders."

If this were not true, it would be possible for a utility to so adjust and jumble its rates that they might be fair for one class of service and highly inequitable for another class or kind of service. It would be possible for a utility company to make an abnormally high charge upon domestic consumers as the Commission found the plaintiff in error is doing in the present instance, and a corresponding low rate to commercial or power users of electricity.

The Public Utilities Commission, under these circumstances, if the contention of the plaintiff in error is sustained in this case, would have no authority whatsoever to lower any rate regardless of its inequality or its discriminatory character, if the gross income of the company were below the 8% return upon the property with the 5% depreciation charge. Such a holding would practically nullify the authority of the Public Utilities Commission insofar as rates or discrimination in service are concerned.

Seventh: Considering the excessive expenditures in the conduct of the business as found by the Commission, the poor service rendered, the exorbitant valuation, there is no confiscation proved. There is not a word of testimony as to what the rate ordered by the Commission would give. Plaintiff in error is condemning the rate fixed by the Commission by the income produced by another rate. Plaintiff in error has taken the reproduction new less depreciation value of the plant to show confiscation, absolutely disregarding the many other elements of valuation which must be considered in determining whether a rate is confiscatory, as clearly stated in Smythe vs Ames, above.

The only question which can be raised by the plaintiff in error in this case is one of confiscation of property.

The valuation fixed by the Commission is attacked as well as the allowance for operating expense.

A great deal of dependence is placed by the plaintiff in error in the commission's engineer's report.

The Supreme Court of Ohio in the recent case of

Lindsey et al. vs. Public Utilities Commission of Ohio, cited by counsel for plaintiff in error, holds as follows:

> "The reports of its engineers and assistants when filed in a case become evidence therein and may be analyzed or impeached as other evidence."

The Commission followed the above rule in the instate case, knowing that the commission's engineer, Pierce, who valued the property was not qualified to speak on the manner in which the business was being conducted. The Commission also observed that even the witnesses of the plaintiff in error did not agree with Mr. Pierce. Mr. White, Chief Engineer of the Commission, only testified from the report of Pierce and had never observed the property. While the statute fixes the manner of making a valuation, the question of confiscation raised in this case goes to the real value of the property and not the statutory valuation. Certainly in determining whether or not the Commission's order amounts to confiscation, this court must take into consideration all the factors entering into valuation:

> "The Supreme Court of the United States, in the case of Smyth vs. Ames, 169 U. S. 466, quoted above, says that the above are 'all matters of consideration, and are to be given such weight as may be just and right in each case.'
>
> The Supreme Court of the United States in a later case, Georgia Railway & Power Co. vs. Railway Commission of Georgia, 262 U. S. 625, says:
>
> "In valuing the physical properties of a public utility corporation as a basis for fixing rates, the present cost of reproduction, less depreciation, is an

important element, but not the only element to be considered. Page 629, Southwestern Bell Telephone Co. vs. Public Service Commission, ante, 276, distinguished." (Syl. 1).

And at page 630:

"The lower court recognized that it must exercise an independent judgment in passing upon the evidence; and it gave careful consideration to replacement cost. But it likewise held that there was no rule which required that in valuing the physical property there must be 'slavish adherence to cost of reproduction, less depreciation'. It discussed the fact that since 1914, large sums had been expended annually on the plant; that part of this additional construction had been done at prices higher than those which prevailed at the time of the rate hearing; and it concluded that 'averaging results, and remembering that values are * * * matters of opinion * * * no constitutional wrong clearly appears'.

"The refusal of the Commission and of the lower court to hold that, for rate-making purposes, the physical properties of a utility must be valued at replacement cost less depreciation was clearly correct. As was said in Minnesota Rate Cases, 230 U. S. 352, 434: 'The ascertainment of that value is not controlled by artificial rules. It is not a matater of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts.'

"What these relevant facts are had been stated in Smyth vs. Ames, 169 U. S. 466, 546, 547."

Using this rule so clearly established, this court must conclude that the premise of the plaintiff in error as to the real valuation of the property is faulty and the argument presented on that premise therefore fails.

The plaintiff in error objects to the disallowance of organization expense. There was no testimony either as to its expenditure or reasonableness. The Commission can make no finding without evidence:

"The Chicago Junction Case, Adv. Sheets April 1, 1924, Supreme Court Reporter, page 317:

"Facts conceivably known to the Interstate Commerce Commission but not put in evidence, will not support an order of the Commission." (Syl. 3).

Florida East Coast Ry. Co. vs. United States, 234 U. S. 167.

"The rule that a finding of fact made by the Interstate Commerce Commission concerning a matter within the scope of the authority delegated to it is binding and may not be re-examined in the courts does not apply where the finding was made without any evidence whatever to support it; the consideration of such a question involves not an issue of fact, but one of law which it is the duty of the courts to examine and decide.

"The record does not disclose any evidence justifying the order of the commission directing a reduction of rates which had been held to be reasonable by a prior order of the commission.

"In a proceeding against several railroads, testimony as to the condition of traffic on certain railroads does not tend to establish conditions on another road in regard to which no testimony is given and where the record shows essential differences between it and those roads in regard to which the testimony was given. (200 Fed. Rep., 797, reversed.)"

New England Divisions Case, 261 U. S., 184, opinion by Mr. Justice Brandeis, page 203:

"Sixth. It is contended that the order is void, because it is unsupported by evidence. An order

of the commission fixing rates, if unsupported by evidence, is clearly invalid. Interstate Commerce Commission vs. Union Pacific R. R. Co., 222 U. S., 541, 547; Florida East Coast Ry. Co. vs. United States, 234 U. S., 167. The rule must of course, be the same in respect to an order fixing divisions."

The complaint against allowance for operating expense fails when the court considers the needless expenditures hereinbefore cited, the inefficient management and the unexplained increase of operating costs at the time the new rates were filed, and the further fact that the prices for necessaries in the business were then at their peak with a drop inevitable.

The decision of the Supreme Court of Ohio clearly shows that the plaintiff in error had the impartial and independent judgment of that court, uninfluenced by the determination of the Commission below.

In view of the failure of the plaintiff in error to show the reasonableness of the rates filed or the unreasonableness of the finding and order of the defendant in error; the apparent reasonableness of the Commission's order in the light of the unusual conditions of prices, temporary in character; the showing of poor service and inefficient management by the witnesses of the plaintiff in error; the absolute failure of the plaintiff in error to show confiscation of property when the proper elements of value are considered and proper expenditures allowed; the fact that the rate asked is the highest in Ohio and no explanation to justify such a fact; and that the Commission allowed a substantial increase, which has been untried, we submit that the order of the Com-

mission and the decision of the Supreme Court of Ohio do not amount to confiscation of property and should therefore be sustained.

Respectfully submitted,

C. C. CRABBE,
Attorney General of Ohio.

JOHN W. BRICKER,
Attorney for The Public Utilities Commission of Ohio.

Of Counsel:

BURCH D. HUGGINS.
GRANVILLE BARRERE.